No. 6713

In the United States
Circuit Court of Appeals
For the Ninth Circuit

JOSEPH BROWN, RUDOLPH BOUTHELLIER and FRANK BOUTHELLIER,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the District of Oregon.

Mellis Printing Co., 461 Morrison St., Portland, Ore.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD

INDEX TO THE PRINTED TRANSCRIPT OF RECORD—Continued

INDEX TO THE PRINTED TRANSCRIPT OF RECORD—Continued

INDEX TO THE PRINTED TRANSCRIPT OF RECORD—Continued

INDEX TO THE PRINTED TRANSCRIPT OF RECORD—Continued

INDEX TO THE PRINTED TRANSCRIPT OF RECORD—Continued

NAMES AND ADDRESSES OF ATTORNEYS OF RECORD

BARNETT H. GOLDSTEIN, Pacific Bldg., Portland, Oregon,

For the Appellants.

GEORGE NEUNER, United States Attorney, and CHARLES ERSKINE, Asst. United States Attorney, Portland, Oregon,

For the Appellee.

BE IT REMEMBERED, That on the 20th day of September, 1930, there was duly filed in the District Court of the United States for the District of Oregon, an INDICTMENT in words and figures, as follows, to-wit:

In the District Court of the United States
For the District of Oregon.

United States of America vs. Joseph Brown (true name Nicholas A. Tringas), William Brown (true name Zeniphon A. Tringas), Gertrude Hodgson, Elsie Hodgson, T. P. Hodgson, Frank W. Hodgson, Walter L. Tooze, Jr., Victor Scholz, George Moffett, Art D. Hines, Louis Anderson, Rex Keene, John Gilliland, Rudolph Bouthellier, Paul Richardson, Carl Thompson, W. O. Zielenski, Wilford La Jesse, Gus J. Daskalos, Jack Kelly, Palmer Peterson, Paul Maras, Tom Alstott, James Mooney, James Hershey, John Doe Kahn (true christian name unknown), James Short, Pete Aperges, John Banakis, M. C. Barahan, Pete Andriatos, Emanuel Wolf, Earl Trowbridge, Dominick

Mussorafite, Frank Bouthellier, and B. Schatz, Defendants.

C 13188—INDICTMENT for Violation of Section 37 of the Federal Penal Code, and Section 3, Title II, National Prohibition Act.

United States of America, District of Oregon, ss.

The Grand Jurors of the United States of America, for the District of Oregon, duly impaneled, sworn and charged to inquire within and for said District, upon their oaths and affirmations, do find, charge, allege, and present:

COUNT ONE:

That Joseph Brown (true name Nicholas A. Tringas), William Brown (true name Zeniphon A. Tringas), Gertrude Hodgson, Elsie Hodgson, T. P. Hodgson, Frank W. Hodgson, Walter L. Tooze, Jr., Victor Scholz, George Moffett, Art D. Hines, Louis Anderson, Rex Keene, John Gilliland, Rudolph Bouthellier, Paul Richardson, Carl Thompson, W. O. Zeilenski, Wilford LaJesse, Gus J. Daskalos, Jack Kelly, Palmer Peterson, Paul Maras, Tom Alstott, James Mooney, James Hershey, John Doe Hahn (whose true Christion name is to the Grand Jurors unknown), James Short, Pete Aperges, John Banakis, M. C. Barahan, Pete Andriatos, Emanuel Wolf, Earl Trowbridge, Dominick Mussorafite, Frank Bouthellier, and B. Schatz, the defendants above-named, together with Emmons Jelkin, Frank Cameron, Albert Walter, William Webb, E. L. Webb and Roy Cameron, and divers other persons to the Grand Jurors unknown, on or about the

12th day of October, 1927, the real and exact date of which is to these Grand Jurors unknown, and continuously and at all times thereafter up to and including on or about the 15th day of September, 1930, did wilfully, unlawfully, feloniously, and knowingly conspire, combine, confederate, and agree together to commit certain offenses against the United States, that is to say: to unlawfully, wilfully and knowingly violate the Act of Congress of October 28, 1919, and particularly Sections 3 and 25, Title II, thereof, the short title of which act of Congress is the "National Prohibition Act" and which is commonly known as the "Volstead Act", in that they would, in the Counties of Multnomah, Clackamas, Polk, Marion, Linn, Yamhill, Washington, Columbia, Clatsop, and Tillamook, and divers other counties to the Grand Jurors unknown, in the State and District of Oregon, and within the jurisdiction of this Court, and in the Counties of King, Mason, and Yakima, in the State of Washington, wilfully, knowingly, and unlawfully manufacture, sell, barter, transport, possess, deal in, deliver, and furnish intoxicating liquor, to-wit: moonshine whiskey and other intoxicating liquors, containing more than one-half of one per cent of alcohol by volume, and intended for beverage purposes, otherwise than as authorized in the aforesaid Act of Congress and in violation of said Act.

That, for the purpose of executing said unlawful conspiracy, combination, confederation and agreement, and to effect the objects thereof, thereafter, and while said unlawful conspiracy, combination, confederation and agreement was in existence, certain of said conspir-

ators, at the several times and places in that behalf hereinafter mentioned, have done and cause to be done certain acts, that is to say:

1. From on or about the 26th day of July, 1929, until the 5th day of October, 1929, the defendants, George W. Moffett, Arthur D. Hines, and Louis Anderson, manufactured a quantity of moonshine whiskey on a ranch occupied by said Louis Anderson, which is approximately two and one-half miles east of the town of Rickreall, in Polk County, Oregon.

2. From on or about the 8th day of November, 1929, until the 20th day of December, 1929, Frank Hodgson, Elsie Hodgson, B. Schatz, Earl Trowbridge, Rex Keene, and John Gilliland, defendants above-named, and Emmons Jelken manufactured moonshine whiskey in a still upon the ranch occupied by the defendant, B. Schatz, and known as the Baker Ranch, situated about one mile from the town of Stayton, in the County of Marion, State of Oregon.

3. On or about the 15th day of January, 1930, the exact date being to the Grand Jurors unknown, Frank Hodgson, T. P. Hodgson, and B. Schatz, defendants above-named, and Emmons Jelken set up two stills at 4046 31st Avenue, South, in Seattle, King County, State of Washington.

4. Between April 16, 1930, and May 8, 1930, Frank Hodgson, Elsie Hodgson, Rex Keene, Rudolph Bouthellier, and Paul Richardson, defendants above-named, and Emmons Jelken manufactured a quantity of moonshine whiskey at Maple Point, Mason County, Washington, near Union, Washington.

5. From on or about the 12th day of May, 1930, until the 7th day of July, 1930, Frank Hodgson, Elsie Hodgson, Paul Richardson, Rudolph Bouthellier, Frank Bouthellier, Rex Keene, Carl Thompson, and W. O. Zielenski, defendants above-named, and William Webb, Frank Cameron, E. L. Webb, Roy Cameron, and Emmons Jelken possessed a still and other materials, designed for the manufacture of intoxicating liquor, on a ranch owned by the same W. O. Zielenski, which is approximately two and one-half miles east of Crabtree, Linn County, Oregon.

6. On or about the 6th day of July, 1930, the exact date being to the Grand Jurors unknown, the defendants, Emanuel Wolf and Frank W. Hodgson, entered into an agreement with Albert Welter to rent the latter's ranch near Stayton, Marion County, Oregon, for the purpose of operating a still.

7. On or about the 20th day of July, 1930, the exact date being to the Grand Jurors unknown, the defendants, Gertrude Hodgson and Frank W. Hodgson, went to the still in the barn on the Welter Ranch, near Stayton, Marion County, Oregon.

8. From on or about the 8th day of July, 1930, to the 26th day of July, 1930, the defendants, Frank W. Hodgson, Rex Keene, Paul Richardson, and John Gilliland, possessed a still and other materials designed for the manufacture of intoxicating liquor, on the Welter Ranch, near Stayton, Marion County, Oregon.

9. On the 30th day of April, 1930, Joseph Brown (True Name Nicholas A. Tringas) and Walter L. Tooze, Jr., on Couch Street, near the corner of Third

Street, in Portland, Multnomah County, Oregon, directed the delivery of twenty gallons of moonshine whiskey.

10. On the 7th day of April, 1930, in Portland, Multnomah County, Oregon, the defendant, Jack Kelly, possessed fifteen gallons of moonshine whiskey.

11. On the 15th day of April, 1930, the defendant, Victor Scholz, transported sixty gallons of moonshine whiskey at Wilsonville, Oregon.

12. On the 30th day of April, 1930, the defendant, Paul Maras, possessed twenty gallons of moonshine whiskey at the Overland Hotel, Portland, Oregon.

13. On or about the 20th day of April, 1930, the exact date being to the Grand Jurors unknown, Joseph Brown (True Name Nicholas A. Tringas) sold to the defendant, Tom Alstott, five gallons of moonshine whiskey in Apartment 301, Meredith Apartments, in the City of Portland, county of Multnomah, Oregon, for which defendant Tom Alstott, paid defendant, Joseph Brown (True Name Nicholas A. Tringas) the sum of Twenty ($20) Dollars.

14. On or about the 3rd day of December, 1929, the exact date being to the Grand Jurors unknown, the defendant, William Brown (True Name Zeniphon A. Tringas) piloted Elsie Hodgson, defendant above-named, and Emmons Jelken from Grand Ronde, Oregon, to a ranch near Tillamook, Oregon, where defendant, William Brown (True Name Zeniphon A. Tringas) helped unload fifty gallons of moonshine whiskey.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT TWO:

From on or about the 8th day of November, 1929, until on or about the 20th day of December, 1929, the exact dates being to the Grand Jurors unknown, in the County of Marion, State and District of Oregon, and within the jurisdiction of this Court, Frank W. Hodgson, Elsie Hodgson, B. Schatz, Earl Trowbridge, Rex Keene, and John Gilliland, the defendants above-named, did unlawfully, wilfully, knowingly, and feloniously manufacture a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT THREE:

That from on or about the 12th day of May, 1930, until the 7th day of July, 1930, the exact dates being to the Grand Jurors unknown, in Linn County, in the State and District of Oregon, and within the jurisdic-

tion of this Court, Frank W. Hodgson, Elsie Hodgson, Paul Richardson, Rudolph Bouthellier, Frank Bouthellier, Rex Keene, Carl Thompson, and W. O. Zielenski, defendants above-named, did unlawfully, wilfully, knowingly, and feloniously manufacture a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT FOUR:

That from on or about the 8th day of July, 1930, to on or about the 26th day of July, 1930, the exact dates being to the Grand Jurors unknown, in the County of Marion, State and District of Oregon, and within the jurisdiction of this Court, Frank W. Hodgson, Rex Keene, Paul Richardson, and John Gilliland, defendants above-named, did unlawfully, wilfully, knowingly, and feloniously manufacture a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National prohibition act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT FIVE:

That Gus Daskalos, defendant above-named, on or about the 20th day of April, 1930, the exact date being to the Grand Jurors unknown, in Clackamas County, State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT SIX:

That James Short, defendant above-named, on or about the 21st day of April, 1930, the exact date being to the Grand Jurors unknown, in the County of Multnomah, State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the

statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT SEVEN:

That Wilford LaJesse, defendant above-named, on or about the 25th day of April, 1930, the exact date being to the Grand Jurors unknown, at Clatskanie, in the State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT EIGHT:

That M. C. Barahan, defendant above-named, on or about the 25th day of April, 1930, the exact date being to the Grand Jurors unknown, at Westport, in the State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and in-

tended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT NINE:

That Pete Aperges, defendant above-named, on or about the 29th day of April, 1930, the exact date being to the Grand Jurors unknown, at Astoria, in the State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT TEN:

That Paul Maras, defendant above-named, on or about the 30th day of April, 1930, the exact date being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-

wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT ELEVEN:

That John Doe Hahn (whose true Christian name is to the Grand Jurors unknown), on or about the 1st day of May, 1930, the exact date being to the Grand Jurors unknown, at Portland, in the State and District of Orégon, and within the jurisdiction of this Court, did knowingly, unlawfully, and wilfully have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT TWELVE:

That Palmer Peterson, defendant above-named, on or about the 11th day of April, 1930, the exact date being to the Grand Jurors unknown, at Portland, in the

State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT THIRTEEN:

That James Hershey, defendant above-named, on or about the 8th day of April, 1930, the exact date being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT FOURTEEN:

That John Banakis, defendant above-named, on or about the 29th day of April, 1930, the exact date being to the Grand Jurors unknown, at Astoria, in the State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT FIFTEEN:

That Dominick Mussorafite, defendant, above-named, on or about the 15th day of June, 1930, the exact date being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT SIXTEEN:

That Jack Kelly, defendant above-named, on or about the 17th day of April, 1930, the exact date being to the Grand Jurors unknown, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT SEVENTEEN:

That Tom Alstott, defendant above-named, on or about the 17th day of April, 1930, the exact date being to the Grand Jurors unknown, in the County of Multnomah, State and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, knowingly, and feloniously transport a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form

of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT EIGHTEEN:

That James Mooney, defendant above-named, on or about the 20th day of April, 1930, the exact date being to the Grand Jurors unknown, at Portland, in the state and District of Oregon, and within the jurisdiction of this Court, did unlawfully, wilfully, and knowingly have in his possession a quantity of intoxicating liquor, to-wit: moonshine whiskey, containing more than one-half of one per cent of alcohol by volume and intended for beverage purposes, in violation of the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid further charge and present that heretofore, to-wit: on the 16th day of July, 1923, one Pete Aperges was convicted, upon his plea of guilty, in the United States District Court for the District of Oregon, in cause No. C-10351 on the docket of said Court, of the offense of having, on or about the 16th day of June, 1923, unlawfully possessed intoxicating liquor in violation of the terms and provisions of the National Prohibition Act; that a final judgment and sentence was on the said 16th day of July, 1923, duly and regularly entered in said cause, which said

judgment and sentence has not been appealed from, vacated, set aside, or reversed; that heretofore, to-wit: on the 22d day of October, 1925, one Pete Aperges was convicted upon the verdict of a jury, in the United States District Court for the District of Oregon, in Cause No. C-11113 on the docket of said Court, of the offense of having, on or about the 21st day of March, 1925, unlawfully possessed intoxicating liquor in violation of the terms and provisions of the National Prohibition Act; that a final judgment and sentence was, on the 30th day of October, 1925, duly and regularly entered in said cause, which said judgment and sentence had not been appealed from, vacated, set aside, or reversed; and that the said Pete Aperges, so convicted and sentenced in said Causes No. C-10351 and C-11113 aforesaid, is the same person as Pete Aperges hereinabove charged, and that the hereinabove charged offense of possession of intoxicating liquor is the third offense of possession of intoxicating liquor by him, the said Pete Aperges, committed in violation of the National Prohibition Act.

And the Grand Jurors aforesaid further charge and present that heretofore, to-wit: on the 28th day of October, 1929, one D. Fight was convicted, upon his plea of guilty, in the United States District Court for the District of Oregon in Cause No. C-12900, of the offense of having, on or about the 21st day of August, 1929, and the 22d day of August, 1929, unlawfully possessed intoxicating liquor in violation of the terms and provisions of the National Prohibition Act; that a final judgment and sentence was, on the 28th day of Octo-

ber, 1929, duly and regularly entered in said cause, which said judgment and sentence has not been appealed from, vacated, set aside or reversed; and that the said D. Fight, so convicted and sentenced in said Cause No. C-12900 aforesaid, is the same person as Dominick Mussorafite hereinabove charged, and that the hereinabove charged offense of possession of intoxicating liquor is the second offense of possession of intoxicating liquor by him, the said Dominick Mussorafite, committed in violation of the National Prohibition Act.

Dated at Portland, Oregon, this 20th day of September, 1930.

A TRUE BILL

CHAS. H. STICKELS,
Foreman, United States Grand Jury.

GEORGE NEUNER,
United States Attorney.

CHAS. W. ERSKINE,
Assistant United States Attorney.

AND AFTERWARDS, to-wit: on the 29th day of October, 1930, there was duly filed in said Court, a Record of Arraignment and Plea, of RUDOLPH BOUTHELLIER and FRANK BOUTHELLIER, among others, in words and figures as follows, to-wit:

Now on this day comes into court the United States Marshall, and produces the body of each of the defendants James Hershey and James Short above named.

WHEREUPON plaintiff being present by Mr. Charles W. Erskine, Assistant United States Attorney, and the defendants RUDOLPH BOUTHELLIER,

FRANK BOUTHELLIER and Jack Kelly, above named, each in his own proper person and by Mr. Walter E. Critchlow, of counsel, the said defendants are duly arraigned upon the indictment herein, and the defendant James Hershey states to the Court that his true name is James Hersey, and the defendant James Short states to the Court that his true name is N. J. Rutley, and for plea to said indictment, each of the defendants, RUDOLPH BOUTHELLIER, FRANK BOUTHELLIER and Jack Kelly, each for himself, says that he is not guilty.

AND AFTERWARDS to-wit: on the 17th day of March, 1931, there was duly filed in said Court, a Record of Arraignment and Plea of JOSEPH BROWN, in words and figures, as follows, to-wit:

Now at this day comes the plaintiff, by Mr. Charles W. Erskine, Assistant United States Attorney, and the defendant JOSEPH BROWN above named in his own proper person and by Mr. Barnett H. Goldstein, of counsel.

WHEREUPON the said defendant is duly arraigned upon the indictment herein and states to the Court that his true name is JOSEPH A. BROWN, and for plea to the indictment, says that he is not guilty.

RECORD OF TRIAL

AND AFTERWARDS to -wit: on the 9th day of April, 1931, present the HONORABLE CHARLES C. CAVANAH, United States District Judge, this

cause coming on for trial, the following proceedings were had in said cause, to-wit:

Now at this day comes plaintiff, by Mr. Charles W. Erskine and Mr. Livy Stipp, Assistant United States Attorneys, and the defendant Dominick Mussorafite, in his own proper person and by Mr. Charles W. Robison of counsel, and the defendant Paul Maras, in his own proper person and by Mr. John A. Collier of counsel, whereupon the said defendant, Dominick Mussorafite, for plea to the indictment herein says that he is not guilty. Thereupon the said defendant, Paul Maras retracts his plea of not gulty heretofore entered to the indictment herein, and for plea to said indictment now says that he is guilty as charged in said indictment.

Thereupon comes the plaintiff, by Mr. Charles W. Erskine and Mr. Livy Stipp, Assistant United States Attorneys, and the defendant JOSEPH A. BROWN, in his own proper person and by Mr. Barnett H. Goldstein, of counsel, the defendant Zenaphon A. Tringas in his own proper person, and by Mr. E. M. Page of counsel, the defendants Gertrude Hodgson and Elsie Hodgson, each in her own proper person and by Mr. Forrest E. Littlefield and Mr. Joseph N. Helgerson of counsel, the defendant Walter L. Tooze, Jr., in his own proper person and by Mr. Joseph O. Stearns, Jr., Mr. Lamar Tooze and Mr. W. G. Hare of counsel, the defendants George Moffett and Art D. Hines, each in his own proper person and by Mr. Arthur I. Moulton of counsel, the defendants RUDOLPH BOUTHELLIER and Carl Thompson, each in his own proper person and by Mr. Walter E. Critchlow of counsel, the

defendant Jack Kelly in his own proper person and by Mr. Walter E. Critchlow and Mr. Charles W. Robison of counsel, the defendants Gus J. Daskalos and M. C. Barahan, each in his own proper person and by Mr. Thomas G. Ryan of counsel, the defendant N. J. Rutley, in his own proper person and by Mr. Paul M. Long of counsel, the defendant Dominick Mussorafite in his own proper person and by Mr. Charles W. Robison of counsel, the defendant FRANK BOUTHELLIER in his own proper person and by Mr. Thomas B. Handley of counsel, and the defendants Wilford LaJesse, Palmer Peterson and Earl Trowbridge each in his own proper person.

AND it appearing to the Court that the said defendants Wilford LaJesse, Palmer Peterson and Earl Trowbridge are without counsel to represent them in said cause, Mr. Thomas G. Ryan, an attorney of this court offers to represent in this cause the said defendants Wilford LaJesse and Palmer Peterson, and the said defendants consenting thereto,

IT IS ORDERED that said Thomas G. Ryan be and he is hereby appointed attorney for said defendants Wilford LaJesse and Palmer Peterson. The said Earl Trowbridge informs the court that he does not desire the aid of counsel in this cause.

THEREUPON, upon motion of Mr. Arthur I. Moulton of counsel for the defendants George Moffett and Art D. Hines,

IT IS ORDERED that the appearance of Mr. Walter E. Critchlow be entered in this cause as counsel for said George Moffett and Art D. Hines,

THEREUPON, this being the day set for the trial of this cause as to the defendants now appearing herein, the court proceeds to select a jury to try the issues joined in this cause, and the name of Dennis E. Dawson being drawn from the jury box as a juror in this cause, and it being suggested to the court that the said juror has recently been ill, all of the attorneys on behalf of the plaintiff and for the defendants herein in open court consenting thereto,

IT IS ORDERED that Dennis E. Dawson be excused from serving as a juror in this cause, and that his name be returned to the jury box and that another name in place thereof be drawn from the jury box.

AND thereupon there are drawn from the jury box the names of the following named jurors, viz: Chester F. Flint, John W. Miller, W. R. Scheurer, J. E. Luckey, J. Howard Durham, E. S. Addison, Daniel H. Bussard, Jr., Albert W. Morgan, Robert H. Bond, J. D. Gordon, Oscar N. Wickstrand and John C. Daries, twelve good and lawful men of the District. Whereupon the said plaintiff having exhausted all of its challenges provided by law, and the said defendants jointly having exercised ten challenges, the said defendant Dominick Mussorafite, by his counsel, Mr. Charles W. Robison, and the said defendant, JOSEPH A. BROWN, by his counsel, Mr. Barnett H. Goldstein, on behalf of said defendants and all of the other defendants in this cause move the court for leave to make further challenges in excess of the ten challenges. Upon consideration whereof,

IT IS ORDERED that said motion be and the same is hereby denied, to which ruling, all of the said defendants except and their exceptions are allowed, whereupon said jurors being accepted by the parties hereto are duly impaneled and sworn.

And thereupon on motion of the defendant Walter L. Tooze, Jr., by Mr. Joseph O. Stearns, Jr., of counsel, on behalf of himself and all of the defendants in this cause, it is ordered that all of the witnesses now in attendance upon this court, either for the plaintiff or for the defendants be excused from the court room except when testifying in its behalf,

AND THEREUPON said jury proceeds to hear the evidence adduced, and the hour of adjournment having arrived, the further trial of this cause is continued to to-morrow, Friday, April 10th, 1931, at 9:30 o'clock A. M.

And thereafter on Wednesday, the 22nd day of April, 1931, the jury returned into court its verdict, in words and figures, as follows, to-wit:

VERDICT

"We, the jury duly impaneled and sworn to try the above entitled cause, do find

The defendant JOSEPH A. BROWN, indicted as Joseph Brown (true name Nicholas A. Tringas) GUILTY, as charged in Count ONE of the indictment herein,

The defendant Zenaphon A. Tringas, indicted as William Brown (true name, Zenaphon A. Tringas) NOT GUILTY as charged in Count ONE of the in-

dictment herein,

The defendant Getrude Hodgson, NOT GUILTY as charged in Count One of the indictment herein,

The defendant Elsie Hodgson, GUILTY as charged in Count One of the indictment herein,

The defendant Walter L. Tooze, Jr., NOT GUILTY as charged in Count ONE of the indictment herein.

The defendant George Moffett, NOT GUILTY as charged in Count ONE of the indictment herein,

The defendant Art D. Hines, NOT GUILTY as charged in Count ONE of the indictment herein,

The defendant RUDOLPH BOUTHELLIER, GUILTY as charged in Count ONE of the indictment herein.

The defendant Carl Thompson, NOT GUILTY as charged in Count ONE of the indictment herein,

The defendant Wilford La Jesse, NOT GUILTY as charged in Count ONE of the indictment herein,

The defendant Gus J. Daskalos, NOT GUILTY as charged in Count ONE of the indictment herein,

The defendant Jack Kelly, NOT GUILTY as charged in Count ONE of the indictment herein,

The defendant, N. J. Rutley (indicted as James Short) NOT GUILTY as charged in Count ONE of the indictment herein,

The defendant Earl Trowbridge NOT GUILTY as charged in Count ONE of the indictment herein,

The defendant Dominick Mussorafite, NOT GUILTY as charged in Count ONE of the indictment herein,

The defendant FRANK BOUTHELLIER, NOT GUILTY as charged in Count ONE of the indictment herein,

And we, the jury, duly impaneled and sworn to try the above entitled cause, do find,

The defendant Elsie Hodgson, NOT GUILTY as charged in Count TWO of the indictment herein,

The defendant Earl Trowbridge, GUILTY as charged in Count TWO of the indictment herein,

And we the jury duly impaneled and sworn to try the above entitled cause, do find,

The defendant Elsie Hodgson, NOT GUILTY as charged in Count THREE of the indictment herein,

The defendant RUDOLPH BOUTHELLIER, GUILTY as charged in Count THREE of the indictment herein,

The defendant FRANK BOUTHELLIER, GUILTY as charged in Count THREE of the indictment herein,

The defendant Carl Thompson, NOT GUILTY, as charged in Count THREE of the indictment herein,

And we, the jury, duly impaneled and sworn to try the above entitled cause, do find

The defendant Gus J. Daskalos, GUILTY as charged in Count FIVE of the indictment herein,

And we the jury, duly impaneled and sworn to try the above entitled cause, do find,

The defendant N. J. Rutley, GUILTY as charged in Count SIX of the indictment herein,

And we the jury duly impaneled and sworn to try the above entitled cause, do find,

The defendant Wilford La Jesse, GUILTY as charged in Count SEVEN of the indictment herein,

And we the jury duly impaneled and sworn to try the above entitled cause, do find

The defendant Dominick Mussorafite, GUILTY as charged in County FIFTEEN of the indictment herein,

And, we the jury, duly impaneled and sworn to try the above entitled cause, do find

The defendant Jack Kelly, GUILTY as charged in Count SIXTEEN of the indictment herein.

JOHN C. DARIES, Foreman."

Dated at Portland, Oregon, this 22nd day of April, 1931.

AND AFTERWARDS, to-wit: on Thursday, the 23rd day of April, 1931, present the HONORABLE CHARLES C. CAVANAH, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

JUDGMENT

Now at this day comes the plaintiff, by Mr. Charles W. Erskine, Assistant United States Attorney, and the defendant, JOSEPH A. BROWN, in his own proper person and by Mr. Barnett H. Goldstein of counsel, the defendant Elsie Hodgson in her own proper person and by Mr. Joseph N. Helgerson of counsel, the defendant RUDOLPH BOUTHELLIER in his own

proper person and by Mr. Walter E. Critchlow of counsel, the defendant Wilford La Jesse in his own proper person and by Mr. Paul M. Long of counsel, the defendant Gus J. Daskalos, in his own proper person and by Mr. Thomas G. Ryan of counsel, the defendant Jack Kelly in his own proper person and by Mr. Charles W. Robison of counsel, the defendant Paul Maras in his own proper person and by Mr. John A. Collier of counsel, the defendant N. J. Rutley in his own proper person and by Mr. Paul M. Long of counsel, the defendant Dominick Mussorafite, in his own proper person and by Mr. Charles W. Robison of counsel, the defendant FRANK BOUTHELLIER in his own proper person and by Mr. Thomas B. Handley of counsel, the defendant Pete Apergas in his own proper person and by Mr. Forrest E. Littlefield of counsel, the defendant John Gilliland in his own proper person and by Mr. Fred M. Dempsey of counsel, and the defendant Earl Trowbridge in his own proper person, whereupon on motion of the plaintiff,

IT IS ORDERED That Count Ten of the indictment herein be and the same is hereby dismissed as to the defendant Paul Maras.

Whereupon plaintiff moves the court for sentence of the above named defendants upon the verdicts of guilty heretofore filed herein as to certain of said defendants, and upon the pleas of guilty heretofore entered by other of said defendants, whereupon

IT IS ADJUDGED that the defendant JOSEPH A. BROWN be imprisoned for a term of Eighteen Months in a United States penitentiary and that he be

committed forthwith to the custody of the Attorney General of the United States, or his authorized representative, for imprisonment in a United States penitentiary to be designated by him, and that he stand committed untl this sentence be performed or until he be otherwise discharged according to law, and

IT IS ADJUDGED that the sentence of the defendant Elsie Hodgson be postponed and that she be released on probation pursuant to the order heretofore entered herein, and

IT IS ADJUDGED that for the offense charged in Count ONE of the indictment herein, the defendant RUDOLPH BOUTHELLIER be imprisoned for a term of one year and one day in a United States Penitentiary, and that for the offense charged in Count THREE of said indictment, said defendant be imprisoned for a term of six months in a County Jail, and that he be committed forthwith to the custody of the Attorney General of the United States or his authorized representative for imprisonment in such place of confinement, as may be designated by him, and that he stand committed until each of these sentences be performed, or until he be otherwise discharged according to law, and it is ORDERED that these terms of imprisonment be deemed to run concurrently, and

IT IS ORDERED that for the offense charged in Count TWO of the indictment herein, the defendant Earl Trowbridge be imprisoned for a term of one year and one day in a United States Penitentiary and that he be committed forthwith to the custody of the Attorney General of the United States or his authorized rep-

resentatve for imprisonment in a United States penitentiary to be designated by him and that he stand committed until this sentence be performed or until he be otherwise discharged according to law, and

IT IS ADJUDGED that the defendant FRANK BOUTHELLIER be imprisoned for a term of ten months in a county jail, that the defendant Pete Aperges be imprisoned for a term of six months in a county jail, that the defendant John Gilliland be imprisoned for a term of thirty days in a county jail, and that the defendant Paul Maras be imprisoned for a term of eight months in a county jail, and that each of said defendants be committed forthwith to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a county jail to be designated by him, and that each of said defendants stand committed until his said sentence be performed or until he be otherwise discharged according to law, and

IT IS ADJUDGED that the defendant Wilford La Jesse do pay a fine of Five Hundred Dollars, that the defendant Gus J. Daskalos do pay a fine of One Hundred Dollars, that the defendant Jack Kelly do pay a fine of Five Hundred Dollars, that the defendant N. J. Rutley do pay a fine of Four Hundred Dollars, and that the defendant Dominick Mussorafite do pay a fine of Five Hundred Dollars, and that each of said defendants be committed forthwith to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a county jail to be designated by him until his said fine be paid or until he be otherwise discharged according to law,

WHEREUPON on motion of said defendants,

IT IS ORDERED that the bond on appeal in this cause be and it is hereby fixed for the defendants JOSEPH A. BROWN, Earl Trowbridge and RUDOLPH BOUTHILLIER in the sum of Five Thousand Dollars each, for the defendants FRANK BOUTHELLIER, Pete Aperges, John Gilliland and Paul Maras in the sum of Two Thousand Five Hundred Dollars each, and for the defendants Wilford La Jesse, Gus J. Daskalos, Jack Kelly, N. J. Rutley and Dominick Mussorafite in the sum of Seven Hundred Fifty Dollars each.

AND AFTERWARDS to-wit: on the 27th day of April, 1931, there was duly FILED in said Court a Petition for Allowance of Appeal, on behalf of the defendants JOSEPH BROWN, RUDOLPH BOUTHELLIER and FRANK BOUTHELLIER, which said petition is in words and figures, as follows, to-wit:

PETITION FOR ALLOWANCE OF APPEAL

Come now your Petitioners, Joseph Brown, Rudolph Bouthellier and Frank Bouthellier, defendants in the above entitled cause, and respectfully represent as follows:

That on the 23rd day of April, 1931, upon the trial herein, an order and judgment was entered by this Court in the above entitled cause, wherein and whereby your Petitioners were severally adjudged guilty as hereinafter set forth, and sentenced by the Court as follows:

Your petitioner Joseph Brown was sentenced on Count I of the Indictment herein and adjudged to be confined and imprisoned in a Federal Penitentiary to be designated by the Attorney General of the United States, for a term of eighteen (18) months;

Your petitioner Rudolph Bouthellier was sentenced on Count I of the Indictment and adjudged to be confined and imprisoned in a Federal Penitentiary to be designated by the Attorney General of the United States, for a term of one (1) year and one (1) day, and sentenced on Count III of the Indictment herein and adjudged to be confined and imprisoned in a County Jail to be designated by the Attorney General, for a term of six (6) months, said sentences, however, to run concurrently;

Your petitioner Frank Bouthellier was sentenced on Count III of the Indictment herein and adjudged to be confined and imprisoned in a County Jail to be designated by the Attorney General, for the term of ten (10) months;

Said petitioners to stand committed until said sentences be performed or until they be discharged according to law.

And your said petitioners conceiving themselves severally aggrieved by said order, judgment and sentence so entered herein on the 23rd day of April, 1931, do hereby severally appeal from the said judgment and sentence to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the Assignment of Errors filed herewith and pray that their appeals be allowed, and that Citation be issued as pro-

vided by law; that a transcript of the records and proceedings and documents upon which said judgments were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such Court in such case made and provided.

And, your petitioners further pray that said appeal may be made a supersedeas upon the filing of a bail bond in a sum to be fixed by the Court, and that said orders of imprisonment be stayed pending the final disposition of said appeal.

BARNETT H. GOLDSTEIN,
Attorney for Petitioners.

State of Oregon, County of Multnomah, ss.:

I, Joseph Brown, Rudolph Bouthellier, and Frank Bouthellier, each for himself, being first duly sworn, depose and say that I am the Petitioner above named, and that the foregoing Petition for Allowance of Appeal is true as I verily believe.

JOSEPH A. BROWN.
RUDOLPH BOUTHELLIER.
FRANK BOUTHELLIER.

Subscribed and sworn to before me this 23rd day of April, 1931.

BARNETT H. GOLDSTEIN,
(Seal) Notary Public for Oregon.

My Comm. Expires: Dec. 15, 1931.

Service of the within Petition is hereby accepted this 23rd day of April, 1931.

GEORGE NEUNER,
United States Attorney.
CHAS. W. ERSKINE,
Asst. U. S. Attorney.

Filed April 27, 1931. Geo. H. Marsh, Clerk.

AND AFTERWARDS, to-wit: on the 27th day of April, 1931, there was duly FILED in said Court, an ASSIGNMENT OF ERRORS in words and figures, as follows, to-wit:

ASSIGNMENT OF ERRORS

Now come Joseph Brown, Rudolph Bouthellier and Frank Bouthellier, plaintiffs in error, the defendants named above, by their counsel, and present these assignments of error containing the assignment of error upon which they will rely upon in the United States Circuit Court of Appeals, in the Ninth Circuit, and specify the following particulars, wherein it is claimed that the District Court erred in the course of the trial of said cause:

I.

That the Court erred in this, that during the impaneling of the jury and after the defendants jointly had exercised ten peremptory challenges, the Court denied their request for additional peremptory challenges, which request was duly made to the court for the reason that there was a misjoinder of numerous Counts in the Indictment against separate defendants for separate offenses, and that, therefore, each defendant was entitled to his right to his full quota of peremptory challenges.

Exception was duly saved to the court's denial of their right to said additional challenges.

II.

That the Court erred, over the objection and exception of the defendants, in admitting the testimony of Sheriff G. W. Manning, to the effect that in the Fall of 1927 at a place near Amity, Yamhill County, he found indications of the existence of a still, upon the ground and for the reason that said testimony related to a time long prior to any connection of the defendants on trial for the alleged conspiracy, and with respect to circumstances not showing any connection with the specific charge in the Indictment.

III.

That the Court erred, over the objection and exception of the defendants, in admitting the following evidence testified to by Emmons Jelkin, a witness for the government:

Q. Now about this going to Seattle to testify. Why did you go up there?

A. Was subpoenaed.

Q. By whom?

A. Must be by the government.

Q. For what purpose?

MR. GOLDSTEIN: It seems to me this is a collateral matter, and I object on the ground it is incompetent, irrelevant and immaterial. It is sufficient for him to testify that he went there as a witness under subpoena, but the purpose of it would not have any bearing in this case. He explained the

reason, and the details would not be material here, explained the reason he went with the government agent.

MR. ERSKINE: If Your Honor please, this witness has been questioned about his running around the country with various government agents, and I thought the jury should know what business he had.

Objection overruled. Exception saved.

Q. What was the purpose of your trip to Seattle?

A. To testify for the government in a case against Mrs. Gertrude Hodgson. (310-311)

IV.

That the Court erred, over the objection and exception of the defendants, in refusing to strike out the following evidence testified to by Jack Grant, a witness for the government:

Q. Now what else did you do on April 19th?

A. We went to 224 Grand Avenue.

Q. Where is that?

A. 224 Grand Avenue, Portland, Oregon.

Q. I know; but what kind of business is that?

A. Garage.

Q. Whose is it?

A. Vic Scholz and Art Hines. And was talking to Vic, and he told me that he—he told Agent Moon and I he was afraid to work for Joe Brown any more, before the Feds were after him so bad, and he was a little leary of getting in for conspiracy.

Q. Now what else did he say there. You said the Feds were after him so bad, who did you mean, after who?

A. After Joe Brown.

Q. What else did he say there?

A. He said that the Feds had got plenty of Joe Brown's fellows and equipments, but had never got him, because he would always let the other man do the handling, and play safe himself.

MR. GOLDSTEIN: I move that that answer be stricken out, as it has nothing to do with the furtherance of any conspiracy; purely a statement that has nothing to do with the object for which these people are indicted. I object to that as incompetent, irrelevant and immaterial.

Court: Objection overruled.

Exception saved. (350-351)

V.

That the Court erred, over the objection and exception of the defendants, in admitting the testimony of Roy Cameron, a witness for the Government, in relating a conversation with Bill Zielenski, Emanuel Wolf and Frank Hodgson, none of whom were on trial in this cause.

VI.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of Roy Cameron and E. L. Webb, witnesses for the Government as against these defendants as to a conversation with one of the defendants, Walter Tooze, on July 9th,

1930, after the termination of the alleged conspiracy in so far as the still at Crabtree was concerned, and in the Court's failure, over the objection and exception of defendants, to strike out said testimony as shown by the following objection and exception:

> MR. GOLDSTEIN: I would like to move the testimony of this witness as far as Joe Brown and the other defendants—I am not speaking of Mr. Tooze—as far as Joe Brown and the other defendants who desire to exercise the same right, I wish the record to show we move at this time that the testimony of this witness be stricken out first, upon the ground that it is not in support of these specific charges of conspiracy alleged in count one of the indictment, and second, upon the ground that the latter part of his testimony, concerning which we move, was in relation to a past transaction and not related to or in furtherance of the alleged conspiracy.
>
> COURT. Motion denied.
>
> MR. GOLDSTEIN: Exception. (661)

VII.

That the Court erred, over the objection and exception of the defendants, in admitting the testimony of Lars Berksvick, United States Commissioner and a witness for the Government, as to the appearance before him on a preliminary hearing of Walter Tooze as one of the attorneys for the appearing defendants, upon the ground that the employment of attorneys was not alleged as one of the objects of said alleged conspiracy.

VIII.

That the Court erred, over the objection and exception of the defendants, in admitting the testimony of C. L. Staley as to a conversation with one Nola Webb not in the presence of the defendants:

Q. What conversation did you have with this young lady, Miss Webb, fifteen or sixteen years old Nola, or whatever her name is, there on the evening of the 9th of July, 1930?

MR. GOLDSTEIN: I want the record to show we object as incompetent, irrelevant and immaterial, pure hearsay, and not binding on the defendants on trial.

Objection overruled. Exception saved.

A. As I said, I took description of all the defendants, that these people at the ranch knew, who had helped operate these stills, in the presence of several of the officers. I think L. O. Shirley was there, Till Burnett—N. P. Burnett—George Bore, state agent, Mariat, A. P. Mariat, state agent, and F. E. Dodele. It fell to me to take down the description, and we went into the house and all of these people that were at the ranch chipped in and helped give descriptions of these people. As far as any definite conversation with this girl, I had none, except description of these defendants at that time. (849-850)

IX.

That the Court erred, over the objection and exception of the defendants, in admitting the testimony of

C. L. Staley as to a conversation with defendant, Mussorafite, on July 21st, 1930, on the ground that it was not binding upon the other defendants, and the Court should have so instructed the jury at that time.

X.

That the Court erred, over the objection and exception of the defendants, in admitting the testimony of John Peslee, C. A. Bate, and Arthur W. Jordon, as to an automobile transaction with one A. B. Stewart.

XI.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of C. P. Milne as to an application for electric service by one Earl Dawes.

XII.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of F. E. Dodele, M. P. Burnett and C. G. Baker as to an arrest made on the Welter ranch of certain defendants not on trial and being permitted to relate circumstances subsequent to the termination of the alleged conspiracy.

XIII.

The court erred, over the objection and exception of the defendants, in admitting the testimony of Philip A. Mullen as to the sale of an Olds Coupe to one A. B. Swanson.

XIV.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of one

Leonard Regan as to a conversation with the defendant LaJesse in May, 1930, after his arrest and subsequent to his connection with the alleged conspiracy relative to the defendant, Joe Brown, notwithstanding that the same testimony, when previously given by one Alex Page, was, upon request of the defendants, stricken from the record.

Q. Did you see the defendant Wilford LaJesse on that date?

A. I did. I saw him on that date at Cathlamet.

Q. Did you have a conversation with him there that day?

MR. GOLDSTEIN: We call attention to the fact that this conversation with LaJesse, in a county outside of the issues here, would possibly relate to LaJesse but would have no application to anyone else. Any conversation that he had with LaJesse would be only with respect to LaJesse and would be an oration of the entire event.

MR. ERSKINE: Wait until I ask the question. I object to counsel interfering before I ask the question.

MR. GOLDSTEIN: This is not a matter of interference. I question counsel's right to blame me here for that. I have some rights here.

Q. Did you have such a conversation, Mr. Regan?

A. I did.

Q. What was that conversation?

MR. GOLDSTEIN: Objected to as incom-

petent, irrelevant and immaterial, not binding upon any of the defendants in this case.

COURT: Overruled.

MR. GOLDSTEIN: Exception.

A. I was down there to check over a car that had been seized by the sheriff.

MR. GOLDSTEIN: Object to that and move that it be stricken out as not responsive to the question.

MR. ERSKINE: Yes.

COURT: It will be stricken.

Q. State what the conversation was. That is all that is asked you.

A. During the conversation with Mr. LaJesse he asked me if I knew Agent Moon. I said I did not. Well, I said, "do you know him?" He said, "I worked for Mr. Joe Brown the big shot in Portland."

Q. The big what?

A. The big guy in Portland.

MR. GOLDSTEIN: He said "shot."

A. "Guy," is what he said.

MR. GOLDSTEIN: I move that any reference to Joe Brown be stricken out as not having any binding effect upon the defendant Joe Brown.

MR. GOLDSTEIN: Exception.

A. He said he had worked with him with Agent Moon, and this informant had on two different occasions delivered moonshine whiskey to his place or brought moonshine whiskey to his place—one

time a ten-gallon keg and one time two five-gallon kegs.

Q. Dd you have any further conversation there?

A. That was the conversation as far as it related to the defendants in this case.

MR. GOLDSTEIN: Now, if the Court please, we desire the record to show that the defendant Joe Brown and others similarly situated move that this conversation affecting and relating to any others than LaJesse be stricken out and the jury instructed to disregard it upon the following grounds and reasons: First, that this was a conversation subsequent to the arrest of LaJesse and is an oration of some previous events that would only have any binding effect upon the party communicating that statement; and second, upon the ground that there has been no evidence to connect the person he mentioned as Jos Brown as the defendant Brown, who is a defendant in this case; and third, upon the ground there has been no proof of any conspiracy as charged in the indictment or any conspiracy as between LaJesse and the defendant Joe Brown in this case.

COURT: Denied.

MR. GOLDSTEIN: Exception. (1018-1020)

XV.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of Arthur Means as to a conversation with Mussorafite on July

23rd, 1930, not in the presence of the other defendants, and the jury should have been instructed not to consider same as binding upon said other defendants.

XVI.

The Court erred, over the objection and exception of the defendant, in admitting the introduction of Government's Exhibit 30, on the ground that it was not binding upon any other defendant except Mussorafite, and the jury should have been so instructed.

MR. GOLDSTEIN: On behalf of the other defendants we make the objection upon the ground it is incompetent, irrelevant, immaterial and not binding upon said other defendants and that the jury should be instructed to merely regard this instrument as affecting Mussorafite and none of the others.

COURT: Overruled.

MR. GOLDSTEIN: Exception. (1041.)

XVII.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of S. W. Reynolds as to the sale of a Chrysler to Elsie Sherman.

XVIII.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of Charles A. Murphy as to a conversation with George Moffett in the United States penitentiary relative to the purchase of certain automobiles, upon the ground that it was prejudicial notwithstanding that it was subsequently taken from consideration by the jury.

XIX.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of Bert J. Martin as to a transaction with defendant Tooze, upon the ground that it had no connection with any of the other defendants and was not done in pursuance to the specific conspiracy charged in the Indictment and was outside of the issues framed by the Indictment, and the jury should have been instructed to disregard it as to the other defendants.

XX.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of G. W. Manning, Roy Johnson, C. L. Staley, F. E. Dodele, I. Zimmerman, Earl Hartman, Ernest Jelkin, John Gilliland, Jack Grant, L. I. Moon, J. W. Connell, Roy Cameron, E. L. Webb, Wm. Webb, Lars Bergsvick, Albert Welter, Kenneth Lee, Carl D. Gabrielson, A. S. Wells, Bert J. Martin, Francis E. Marsh and J. O. Johnson, upon the ground that said testimony was at variance with the specific charge of conspiracy contained in Count I of the Indictment, or with relation to the specific charges in the remaining counts in the Indictment.

XXI.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of Francis E. Marsh as to the appearance by Walter Tooze as attorney for one Clyde Ullman, as not binding upon any of the other defendants, and the jury should have been then so instructed.

XXII.

The Court erred, over the objection and exception of the defendants, in admitting the testimony of J. O. Johnson, as to a petition for reclamation of an automobile filed by one Walter Tooze on behalf of Art Hines, as not binding upon any of the other defendants and the jury should have been so instructed.

XXIII.

That at the close of the Government case, the defendants severally moved the Court for a directed verdict as to them and stated to the Court that they proposed to stand upon said motion and to introduce no further testimony in their behalf, upon the ground that the evidence submitted as to the alleged conspiracy set forth in the Indictment was at variance therewith, in that evidence was introduced tending to show a number of separate and distinct conspiracies not charged in the Indictment and there was insufficient evidence to warrant the submission to the jury of the conspiracy count in the Indictment as to them.

XXIV.

The Court erred, over the objection and exception of the defendants, in denying the motion of defendants, Joe Brown and Rudolph Bouthellier, for a directed verdict at the close of the government's case as to Count I in the Indictment.

XXV.

The Court erred, over the objection and exception of the defendant, Frank Bouthellier, in denying said defendant's motion for a directed verdict as to Count

III in the Indictment, and that the verdict of guilty on said Count was inconsistent with the verdict of not guilty on Count I of the Indictment.

XXVI.

The Court erred, over the objection and exception of the defendant, Earl Trowbridge, in denying said defendant's motion as to Count III in the Indictment.

XXVII.

The Court erred, over the objection and exception of the defendant, Jack Kelly, in denying said defendant's motion for a directed verdict as to Count III in the Indictment.

XXVIII.

That subsequent to the denial of said defendant's respective motions for directed verdict, the defendant, Walter Tooze, elected to introduce evidence in his own behalf and in the course of said testimony, reference was made to these defendants, to which exception was taken and a request made to the Court, that the jury be instructed to disregard said testimony as to said defendants, upon the ground and for the reason that said defendants had already closed the case by their reliance upon their motions for a directed verdict. To the Court's denial of said request, an exception was duly taken.

XXIX.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

You are instructed to return a verdict of not guilty as to Joe Brown and Rudolph Bouthellier on Count I, of the Indictment, upon the ground and for the reason that evidence introduced is insufficient to charge the said defendants as parties to the specific conspiracy alleged in said Count.

XXX.

That the Court erred in refusing to give the following intruction requested by defendants, to the refusal of which an exception was taken:

If the only evidence in this case, so far as the defendants Joe Brown and Rudolph Bouthellier are concerned, is that they had knowledge that this liquor was being manufactured, sold, transported or possessed, in violation of the Prohibition Act, without any evidence that they conspired with another to effect such manufacture, sale, transportation or possession, then it would be your duty to find a verdict for the defendants Joe Brown and Rudolph Bouthellier on this Count.

XXXI.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

If the only evidence in this case, so far as the defendants Joe Brown and Rudolph Bouthellier are concerned, is that they participated in the sale, transportation, or possession of intoxicating liquor, in violation of the Prohibition Act, without any evidence that it was effected or brought about

through a prior agreement, conspiracy, or combination in which they took part, then it would be your duty to find the defendants Joe Brown and Rudolph Bouthellier not guilty, on Count I of the Indictment, notwithstanding that they may have been guilty of the substantive acts themselves.

U. S. vs. Heitler, 274 Fed. 401.

XXXII.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

While it is true that if one who, after a conspiracy is formed, with knowledge of its existence and the purpose thereof, joins therein and aids and participates in its execution, he becomes as much a party thereto from that time as if he had been an original conspirator, yet you must understand that one cannot be made a member of the conspiracy except by his conscious acts and by his knowledge of the formation of such a conspiracy and his willingness and intention to participate therein. If, therefore, you should find that a conspiracy had originally been formed and that the defendants, Joe Brown and Rudolph Bouthellier, subsequently had done things which were the object of such conspiracy, yet they would not be guilty of this conspiracy charge unless in addition thereto you find that they consciously and knowingly entered into the conspiracy that had originally been formed, and that their acts were the result of a joint and corrupt concert of action.

XXXIII.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

> The acts which are set out in Count I, as Overt Acts, must not be acts which are part of the conspiracy itself; they must be subsequent, independent acts, following a completed conspiracy. Therefore, I instruct you that as the combination of minds in an unlawful purpose is the gist and foundation of this offense, consequently if you are not convinced beyond a reasonable doubt that the defendants are guilty of such conspiracy, you would not be authorized to find them guilty under this count simply because of their participation in the Overt Acts, assuming you should so find. In other words, a defendant who is not a party to, or did not join in, the previous conspiracy, cannot be convicted simply on the Overt Acts.
>
> U. S. vs. Cole, 153 Fed. 804.
>
> U. S. vs. Hirsch, 100 U. S. 34.

XXXIV.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

> I instruct you that if you believe from the evidence, beyond a reasonable doubt, that two or more of these defendants conspired to violate the Prohibition Act as I have heretofore defined, you would be justified in considering the acts of such

co-conspirator, or statements made by him during the existence of such conspiracy, as acts and statements against all who participated in such conspiracy. But I further instruct you, if the conspiracy had already ended, by success or failure, then such statements or acts should not be considered by you against his co-conspirators, but are only admissible as against the person who committed such act, or made such statement.

XXXV.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

Certain witnesses have been called in the course of the trial to testify as to their own participation in this alleged criminal transaction. While accomplices are competent witnesses, it is the duty of the court to warn you that their testimony must always be received with caution and weighed and scrutinized with great care. The jury should not rely upon it unsupported unless it produces in their minds the most positive conviction of its truth.

U. S. vs. Richards, 149 Fed. 454.

Holmgren vs. U. S., 217 U. S. 509.

XXXVI.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

The testimony of a confessed accomplice is not to be taken as that of an ordinary witness of good character in a case, whose testimony is generally and prima facie supposed to be correct. On the contrary, the evidence of such a witness ought to be received with suspicion and with the very greatest care and caution and should not be passed upon by the jury under the same rules governing other and apparently credible witnesses.

Ling vs. U. S., 218 Fed. 818.

Crawford vs. U. S., 212 U. S. 183.

XXXVII.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

In determining the guilt or innocence of the defendants, Joe Brown and Rudolph Bouthellier, you must be convinced beyond a reasonable doubt that they committed the identical offense charged before you would be justified in finding a verdict of guilty. They have been indicted for a violation of the conspiracy statute, as set out in Count I of the indictment, and for nothing else, and their guilt must be established under that statute, or not at all. Until guilt is proven there is an absolute presumption of innocence, and this presumption of innocence continues with the defendant throughout the trial, and stands as sufficient evidence in their favor until from all the evidence you are satisfied beyond a reasonable doubt of their guilt.

If you are not so satisfied it is your duty to acquit.

U. S. vs. Richards, 149 Fed. 454.

XXXVIII.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

While an offense may be established by circumstantial evidence, yet such evidence to warrant a conviction in a criminal case, must be of such a character as to exclude every reasonable hypothesis but that of guilt of the offense imputed to the defendant. If, in other words, the facts proved must all be consistent with the point to his guilt only, and inconsistent with his innocence. The hypothesis of guilt should flow from the evidence proved and be consistent with that of guilt. If the evidence cannot be reconciled either with the theory of innocence or with guilt the law requires that the defendant be given the benefit of the doubt and that the theory of innocence be adopted.

U. S. vs. Richards, 149 Fed. 454.

XXXIX.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

What is a reasonable doubt? It is a term often used, probably very well understood, but not easily defined. It is such a doubt as exists in the mind of a reasonable man after a full, free, and careful

examination and comparison of all the evidence. It is such a doubt as would cause a careful, considerate, and prudent man to pause and consider before acting in the grave and most important affairs of life.

XL.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

I also instruct you that your verdict must be based upon the guilt or innocence of this defendant on this charge and none other, no matter what your opinion may be concerning his guilt upon any other charge or offense. If, therefore, you honestly feel that the evidence as given in this case is insufficient to convince you beyond a reasonable doubt of the guilt of the defendant on this specific charge then it is your duty to return a verdict of not guilty.

XLI.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

There is evidence in this case that one Moon and one Grant were hired by the Government and their expenses paid, for the sole purpose of procuring evidence against this defendant. I therefore instruct you that they are interested witnesses and you should carefully scrutinize their testimony in connection with all the circumstances proven.

40 Cyc. 2655.

XLII.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

> During the course of the trial, evidence was admitted of statements made and acts done by various defendants not in the presence of other defendants. In this connection, I instruct you that such statements made and such acts done should not be considered by you against the defendants not affected, unless you are satisfied, beyond a reasonable doubt, that such statements were made and such acts were done during the pendency of the conspiracy and in furtherance of the common object and that such other defendants were members of such conspiracy.

XLIII.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

> During the course of the trial, evidence was admitted of statements made and acts done by certain defendants not in the presence of other defendants and prior to the time that such other defendants entered the conspiracy if you should find that they did so, and without knowledge of the prior formation of such conspiracy. In that connection, I instruct you that such statements made and such acts done should not be considered by you in any respect as against those defendants who entered the conspiracy if they did so subsequent

to the time when such statements were made and such acts were done, and subsequent to their knowledge of the existence of such prior conspiracy.

XLIV.

That the Court erred in refusing to give the following instruction requested by defendants, to the refusal of which an exception was taken:

The defendant, Joe Brown, is charged with being a party to a conspiracy to violate the Prohibition Law, and with nothing more. He is not charged with, nor is he on trial for, the substantive offense of manufacturing, selling, transporting, possessing or dealing in intoxicating liquor. Therefore, even though you may believe that Joe Brown is guilty of manufacturing, selling, transporting, possessing or dealing in intoxicating liquor, yet, even so, you must bear in mind that he is not charged with, nor on trial for, committing such offenses, but with the crime of conspiring with others to commit such offenses, and if the prosecution has failed to convince you beyond a reasonable doubt that Joe Brown is guilty of such conspiracy, it would be your duty to acquit him, notwithstanding you may believe him guilty of committing the other offenses, for as I have pointed out to you, he is not charged with, nor on trial for such other offenses.

XLV.

The Court erred in charging the jury as follows, to which exception was duly taken:

Now the phrase "reasonable doubt" cannot be defined with absolute accuracy, but by some explanation perhaps I can assist you in understanding your duty and obligation in that regard. A reasonable doubt is just such a doubt as the term implies, and is one for which you can give a reason. It means a doubt which is reasonable in view of all the evidence and growing out of the testimony in the case, or the lack of testimony. So generally, I may say to you that after you have fairly and impartially considered all of the evidence, with a sincere and earnest effort to reach a conclusion, if you can candidly say that you are not fully satisfied of the defendants' guilt, if you still entertain such a doubt as would cause you to hesitate in the most important affairs of life, you have a reasonable doubt and your verdict should be for the defendants. But, upon the other hand, if, after an impartial and earnest consideration and comparison of the evidence, your minds are in such a condition that you can truthfully say that you have an abiding conviction that the charge is true, then you have no reasonable doubt, and it becomes your duty to so declare by your verdict.

XLVI.

The Court erred in charging the jury as follows, to which exception was duly taken:

Did two or more persons so agree together to do the unlawful thing, that is, conspire to commit an offense against the United States, and did one of them take some step looking to the accom-

plishment of the unlawful purpose? If so, the offense of conspiracy is completed and punishable, even though the object of the conspiracy is never attained.

XLVII.

The Court erred in charging the jury as follows, to which exception was duly taken:

Conspirators do not get together and sign their names to a writing, as you would if you were contracting to sell a piece of property to someone who was agreeing to buy it for any innocent purpose. You can hardly expect to find a written agreement among conspirators. Moreover, it isn't necessary that such agreement be reached by any express words. Conspirators do not always express to each other their common purpose. Sometimes there are conspiracies that reach out so as to include persons, some of whom have never seen the others at all, or may never have heard of them. The question is, did the alleged conspirators, by words, or by some other means, come to a common understanding that they would do the unlawful thing. That is all that is necessary, but that, gentlemen, is necessary.

XLVIII.

The Court erred in charging the jury as follows, to which exception was duly taken:

I further say to you that if two or more persons set on foot an unlawful conspiracy, that is, a conspiracy to commit an offense against the United

States, and if another person learns of that, knows of it, and with such knowledge knowingly contributes assistance to the accomplishment of the unlawful thing, he then joins himself to the conspiracy and becomes a co-conspirator without any agreement other than the understanding that is implied from the fact that, with knowledge that two or more persons were about to commit an offense against the United States, he knowingly and willingly lends assistance—the assistance may be very small or large—but anyone who knows that a conspiracy is being or has been set on foot, and is being carried out, and with such knowledge wilfully contributes to the end of the conspiracy, becomes a member of the conspiracy and becomes chargeable equally with those who may have originated the unlawful scheme.

XLIX.

The Court erred in charging the jury as follows, to which exception was duly taken:

If you find from the evidence beyond a reasonable doubt that a conspiracy existed as charged in the indictment, then the acts and declarations of each party to such conspiracy, done or made in furtherance of the agreement, design, and purpose of carrying the criminal enterprise into effect, are, in contemplation of the law, the acts and declarations of all the parties to the conspiracy and are binding on all such parties.

L.

The Court erred in charging the jury as follows, to which exception was duly taken:

> If you believe the testimony of the Government that these men were accomplices with the defendants, or with either of them, then their testimony is to be scrutinized with care and received with caution, because of the conditions under which they gave testimony. That does not mean, however, that you can arbitrarily decline to believe them any more than you would arbitrarily decline to believe a witness who is interested for some other reason. You are simply cautioned to scrutinize their testimony with care and caution, and give to it such weight as you think it may be entitled to.

LI.

The Court erred in charging the jury as follows, to which exception was duly taken:

> Sometimes it is necessary for the Government, in uncovering crimes of the most serious character, to use the testimony of accomplices, those who turn states evidence, as it is sometimes put, and were it not for such testimony, sometimes it would be impossible to bring others who are guilty to justice. So that here you will weigh the testimony of these six witnesses in the light of the suggestions I have made to you, scrutinize it with care and caution. Under the law accomplices are competent witnesses and it is your duty to consider their testimony. It should, however, as I have said, be received with caution and scrutinized with care.

LII.

The Court erred in charging the jury as follows, to which exception was duly taken:

> I think I should say to you, gentlemen, the mere purchase of intoxicating liquor would not of itself constitute a crime, but the purchasing and receiving intoxicating liquor from persons, knowing them to be engaged in a conspiracy to violate the National Prohibition Act, would render the person so purchasing and receiving liquor, if received in aid of the conspiracy, a co-conspirator and equally guilty with other conspirators.

LIII.

The Court erred in charging the jury as follows, to which exception was duly taken:

> Referring to the testimony of Moon and Grant, Government witnesses, I will say that it is proper for persons engaged by the Government in detecting the commission of crime, to go about "under cover", as it is sometimes said, that is, unidentified, dressed in different ways, assuming to be engaged in different occupations, and where they suspect that liquor is being sold or manufactured, or in the possession of one, in violation of the law, to go to the suspected person and propose a violation of the law by asking him for liquor, soliciting him to sell liquor, or assisting him in the delivery of liquor. That is entirely proper. You have heard them testify; you noticed their appearances on the witness stand, and it is for you and you alone to say what

weight is to be given to their testimony. Now they are what is called or has been designated as under cover agents, that is, they were engaged in the business of trying to detect people who were suspected of violating the prohibition law. As you very well know, the liquor business is an outlaw business and it is prohibited by statute.

BARNETT H. GOLDSTEIN,
Attorney for Defendants.

Service of the within Assignment of Errors is hereby accepted this 23rd day of April, 1931.

GEORGE NEUNER,
United States Attorney.
By CHAS. W. ERSKINE,
Asst. U. S. Attorney.

Filed April 27, 1931. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit: on the 27th day of April, 1931, there was duly FILED in said Court, an Order allowing appeal, and staying commitment pending appeal, in words and figures as follows, to-wit:

ORDER ALLOWING APPEAL

The above entitled cause coming on for hearing upon the petition of Joseph Brown, Rudolph Bouthellier, and Frank Bouthellier, for an allowance of appeal, and that said appeal operate as a supersedeas, and

It appearing that the defendants and petitioners have filed herein their Assignment of Errors as relied upon,

IT IS HEREBY ORDERED that said petition of Joseph Brown, Rudolph Bouthellier, and Frank Bouthellier for an appeal from the judgment and sentence of imprisonment made and entered herein on April 23rd, 1931, be, and the same are, severally hereby granted, and that said appeal is hereby allowed, and

IT IS FURTHER ORDERED that said appeal operate as a supersedeas, and that the order of imprisonment provided in said judgment be stayed pending the final determination of this appeal, upon the filing of the following bonds to be approved by the undersigned:

Joseph Brown, in the sum of $5,000.00.

Rudolph Bouthellier, in the sum of $5,000.00.

Frank Bouthellier, in the sum of $2,500.00.

That upon the filing of the bonds in said sums so duly approved by me, the said defendants shall be forthwith released pending the final determination of said appeal.

CHARLES C. CAVANAH, Judge.

Dated this 25th day of April, 1931.

Service of the within order is hereby accepted this 23rd day of April, 1931.

GEORGE NEUNER,
United States Attorney.
By CHAS. W. ERSKINE.

Filed April 27, 1931. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit: on the 27th day of April, 1931, there was duly FILED in said Court, an UNDERTAKING ON APPEAL AND SUPERSEDEAS, on behalf of the defendant JOSEPH BROWN, which said undertaking is in words and figures, as follows:

UNDERTAKING ON APPEAL FOR JOSEPH BROWN

That I, Joseph Brown, as principal, and Patrick Leavy, William A. Brown and F. M. Arnold of the County of Multnomah, State of Oregon, as Sureties, are, by these presents, firmly held in bond under the United States of America, in the full sum of Five Thousand & no/100 ($5,000.00) Dollars, to be paid to the United States of America, to which payment well and truly to be made, we hereby bind ourselves, our heirs, assigns, successors, executors and administrators, jointly and severally by these presents.

Whereas, on the 23rd day of April, 1931, at Portland, in the State and District of Oregon, in the District Court of the United States for the District of Oregon in a cause now pending in said court between the United States of America as Plaintiff, and Joseph Brown, et al, as Defendant, a judgment and sentence was rendered against said Joseph Brown, and

Whereas, the said Joseph Brown has obtained an order allowing an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the judgment and sentence in said cause, and also has obtained a citation directed to the United States of America citing and admonishing said United States of Amer-

ica to be and appear in said court thirty (30) days from and after the date of said citation, which citation has been duly served upon the United States of America.

Now therefore, the condition of this obligation is such if the said Joseph Brown shall appear in the United States Circuit Court of Appeals for the Ninth Circuit, when said cause is reached for argument, or when required by law or by rule of said Court, and from day to day thereafter until said cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by said Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of said judgment and sentence appealed from as said Court may direct if said judgment and sentence against him shall be affirmed and/or reversed for trial then the above obligation to be void, otherwise, to remain in full force and effect.

JOSEPH A. BROWN,
Principal.
PATRICK LEAVY,
Aurora, Rt. 4.
WILLIAM A. BROWN,
Hubbard, Rt. 1.
F. M. ARNOLD.

State of Oregon, County of Multnomah, ss.:

I, Patrick Leavy and William A. Brown, whose names are subscribed to the foregoing obligation as Sureties, being first duly sworn upon my oath depose and say: That I am a freeholder and resident of the State of Oregon, and am worth the sum of Ten Thous-

and Dollars over and above all my just debts or liabilities, exclusive of property exempt from execution.

PATRICK LEAVY.
WILLIAM A. BROWN.

Subscribed and sworn to before me this 23rd day of April.

K. F. FRAZER,
U. S. Commissioner, Dist. of Oregon.

The aforegoing bond is hereby approved.

CHARLES C. CAVANAH,
Judge.

Service of the within Bail Bond is hereby accepted this 23rd day of April, 1931.

GEORGE NEUNER,
United States Attorney.
By CHAS. W. ERSKINE,
Asst. U. S. Attorney.

AND AFTERWARDS, to-wit: on the 27th day of April, 1931, there was duly filed in said Court, an UNDERTAKING ON APPEAL AND SUPERSEDEAS, on behalf of the defendant RUDOLPH BOUTHELLIER, which said undertaking is in words and figures, as follows, to-wit:

UNDERTAKING ON APPEAL FOR RUDOLPH BOUTHELLIER

That I, Rudolph Bouthellier, as principal, and Estelle W. Berry and Frank T. Berry of the County

of Multnomah, State of Oregon, as Sureties, are, by these presents, firmly held in bond under the United States of America, in the full sum of Five housand & no/100 ($5,000.00) Dollars, to be paid to the United States of America, to which payment well and truly to be made, we hereby bind ourselves, our heirs, assigns, successors, executors and administrators, jointly and severally by these presents.

Whereas, on the 23rd day of April, 1931, at Portland, in the State and District of Oregon, in the District Court of the United States for the District of Oregon in a cause now pending in said court between the United States of America as Plaintiff, and Joseph Brown, et al, as Defendant, a judgment and sentence was rendered against said Rudolph Bouthellier, and

Whereas, the said Rudolph Bouthellier has obtained an order allowing an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the judgment and sentence in said cause, and also has obtained a citation directed to the United States of America citing and admonishing said United States of America to be and appear in said court thirty (30) days from and after the date of said citation, which citation has been duly served upon the United States of America.

Now therefore, the condition of this obligation is such if the said Rudolph Bouthellier shall appear in the United States Circuit Court of Appeals for the Ninth Circuit, when said cause is reached for argument, or when required by law or by rule of said Court, and from day to day thereafter until said cause shall be finally

disposed of, and shall abide by and obey the judgment and all orders made by said Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of said judgment and sentence appealed from as said Court may direct if said judgment and sentence against him shall be affirmed and/or reversed for trial, then the above obligation to be void, otherwise, to remain in full force and effect.

RUDOLPH BOUTHELLIER,
Principal.

FRANK T. BERRY,
ESTELLE W. BERRY,
Sureties.

State of Oregon, County of Multnomah, ss.:

I, Frank T. Berry and Estelle W. Berry, whose names are subscribed to the foregoing obligation as Sureties, being first duly sworn upon my oath depose and say: That I am a freeholder and resident of the State of Oregon, and am worth the sum of Ten Thousand Dollars over and above all my just debts or liabilities, exclusive of property exempt from execution.

FRANK T. BERRY.
ESTELLE W. BERRY.

Subscribed and sworn to before me this 24th day of April, 1931.

K. F. FRAZER,
United States Commissioner, Dist. of Oregon.

The aforegoing bond is hereby approved.

CHARLES C. CAVANAH,
Judge.

Service of the within Bail Bond is hereby accepted this 23rd day of April, 1931.

GEORGE NEUNER,
United States Attorney.
By CHAS. W. ERSKINE,
Asst. U. S. Attorney.

AND AFTERWARDS, to-wit: on the 27th day of April, 1931, there was duly filed in said Court, an UNDERTAKING ON APPEAL AND SUPERSEDEAS, on behalf of the defendant FRANK BOUTHELLIER, which said undertaking is in words and figures, as follows, to-wit:

UNDERTAKING ON APPEAL FOR FRANK BOUTHELLIER

That I, Frank Bouthellier, as principal, and Estelle W. Berry and Frank T. Berry of the County of Multnomah, State of Oregon, as Sureties, are, by these presents, firmly held in bond under the United States of America, in the full sum of Two Thousand Five Hundred ($2,500.00) Dollars, to be paid to the United States of America, to which payment well and truly to be made, we hereby bind ourselves, our heirs, assigns, successors, executors and administrators, jointly and severally by these presents.

Whereas, on the 23rd day of April, 1931, at Portland, in the State and District of Oregon, in the District Court of the United States for the District of Oregon in a cause now pending in said court between the United

States of America as Plaintiff, and Joseph Brown, et al, as Defendants, a judgment and sentence was rendered against said Frank Bouthellier, and

Whereas, the said Frank Bouthellier has obtained an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in said cause, and also has obtained a citation directed to the United States of America citing and admonishing the United States of America to be and appear in said court thirty (30) days from and after the date of said citation, which citation has been duly served upon the United States of America.

Now therefore, the condition of this obligation is such if the said Frank Bouthellier shall appear in the United States Circuit Court of Appeals for the Ninth Circuit, when said cause is reached for argument, or when required by law or by rule of said Court, and from day to day thereafter until said cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by said Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of said judgment and sentence appealed from as said Court may direct if said judgment and sentence against him shall be affirmed and/or reversed for trial, then the above obligation to be void, otherwise, to remain in full force and effect.

FRANK BOUTHELLIER,
Principal.

FRANK T. BERRY,
ESTELLE W. BERRY,
Sureties.

State of Oregon, County of Multnomah, ss.:

I, Frank T. Berry and Estelle W. Berry, whose names are subscribed to the foregoing obligation as Sureties, being first duly sworn upon my oath depose and say: That I am a freeholder and resident of the State of Oregon, and am worth the sum of Ten Thousand Dollars over and above all my just debts or liabilities, exclusive of property exempt from execution.

FRANK T. BERRY.
ESTELLE W. BERRY.

Subscribed and sworn to before me this 24th day of April, 1931.

K. F. FRAZER,
United States Commissioner, Dist. of Oregon.

The aforegoing bond is hereby approved.

CHARLES C. CAVANAH,
Judge.

Service of the within Bond is hereby accepted this 24th day of April, 1931.

GEORGE NEUNER,
United States Attorney.
By CHAS. W. ERSKINE,
Asst. U. S. Attorney.

AND AFTERWARDS, to-wit: on the 27th day of April, 1931, there was duly filed in said Court, a CITATION ON APPEAL, in words and figures as follows, to-wit:

CITATION ON APPEAL

District Court of the United States of America
District of Oregon

To United States Attorney, Portland, Oregon, Greeting:

WHEREAS, JOSEPH BROWN, RUDOLPH BOUTHELLIER and FRANK BOUTHELLIER have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment rendered in the District Court of the United States for the District of Oregon, in your favor, and have given the security required by law;

YOU ARE THEREFORE HEREBY CITED AND ADMONISHED to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there by, why the said judgment should not be corrected, and speedy justice should not be done to the parties in that behalf.

GIVEN under my hand, at Portland, in said District, this 25th day of April, in the year of our Lord, one thousand nine hundred and thirty-one.

CHARLES C. CAVANAH, Judge.

Due service of the aforegoing Citation on Appeal is hereby accepted this 23rd day of April, 1931.

GEORGE NEUNER,
United States Attorney.
By CHAS. W. ERSKINE,
Asst. U. S. Attorney.

Filed, April 27th, 1931. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit: on the 6th day of July, 1931, there was duly filed in said Court, appellants' BILL OF EXCEPTIONS, in words and figures as follows, to-wit:

BILL OF EXCEPTIONS

BE IT REMEMBERED that the above entitled cause came on regularly for trial on April 9th, 1931, before the Hon. Charles C. Cavanah, U. S. District Judge, plaintiff being represented by Charles W. Erskine and Livey Stipp, Assistant U. S. Attorneys, and the defendants on trial being represented as follows:

Joseph Brown, by his attorney, Barnett H. Goldstein;

Frank Bouthellier, by his attorney, Tom Handley;

Rudolph Bouthellier, by his attorney, Walter Critchlow;

George Moffett, by his attorney, Walter Critchlow;

Art Hines, by his attorney, Walter Critchlow;

Carl Thompson, by his attorney, Walter Critchlow;

Wm. Brown, by his attorney, E. M. Page;

Elsie Hodgson, by her attorney, Joseph Helgerson;

Gertrude Hodgson, by her attorney, Joseph Helgerson;

Walter L. Tooze, Jr., by his attorneys, Wm. Hare and Joseph Stearns;

Wilford LaJesse, by his attorney, Paul Long;

James Short, by his attorney, Paul Long;

Gus J. Daskalos, by his attorney, Thomas Ryan;

M. C. Barahan, by his attorney, Thomas Ryan;

Jack Kelly, by his attorney, Charles Robison;

Dominick Mussorafite, by his attorney, Charles Robison;

Earl Trowbridge, in person;

Palmer Peterson, in person.

That before the jury was impanelled, it was agreed by and between all the counsel and approved by the Court that an exception taken by one defendant shall be considered as being taken by all defendants, without the necessity of repeating the exception for each defendant.

Thereupon the Court proceeded with the empanelling of a jury, and after the various defendants had exercised ten (10) peremptory challenges, and the government had expressed itself as satisfied with the jury as empanelled, the following proceedings were had.

MR. ROBISON: At this time, for the purpose of the record, and for my co-counsel, and specially in reference to the defendant Dominick Mussorafite, I desire to urge upon the court the right, at this time, for other challenges to the jury panel as it now stands. The defendant Mussorafite urges

this under the rule as adopted by the court and acquiesced in this morning upon the following grounds: The defendant Mussorafite is joined with other defendants in count 1, page 2 of the indictment, charging conspiracy; in addition to this the defendant Mussorafite is charged with a substantive act in count 15, as shown in the record herein. In addition thereto, in count 18 the defendant Dominick Mussorafite is charged with a separate and second crime, or second conviction as set forth in the last page of the indictment; these things appearing from the record as it now appears. The defendant Mussorafite, being charged with separate, distinct and substantive acts, in addition to the charge of conspiracy herein, respectfully represents to the court, by and through his counsel, that he is being deprived of his right, namely, the right of a jury of his own choosing, if he be denied the right of further challenge as against any and all defendants charged with conspiracy herein, as included in the indictment herein, and this we respectfully present to your Honor, under the rule set forth this morning, and not in deviation therefrom.

MR. GOLDSTEIN: The defendant Joe Brown having in mind the exercising of additional challenges as far as he is concerned, I desire the privilege of so doing, and would like your Honor to afford the opportunity of submitting authorities which I have available, without unnecessary delay in argument to the court upon this subject.

(Argument)

COURT: It appears the defendants have exercised ten peremptory challenges, as provided by statute, and the request for further challenges will have to be denied.

MR. GOLDSTEIN: Will your Honor give me an opportunity to be heard on this?

COURT: Take your exception.

MR. GOLDSTEIN: The defendant Joe Brown, for himself, at this time takes exception to your Honor's ruling in refusing to permit him to exercise the additional challenges which he claims he is entitled to as of right, by virtue of the fact that the indictment contains a number of counts that are not subject to consolidation under Section 1024 Revised Statutes; and not being subject to consolidation, the defendants are each entitled to their separate quota of challenges, by virtue of misjoinder of causes; it being the contention of the defendant Joe Brown that count 1, being a charge of conspiracy against all the defendants, whereas the seventeen substantive counts are directed against separate defendants covering offenses not involved in any of the overt acts mentioned in the indictment, and arise out of an entirely different set of circumstances, and therefore not properly subject to consolidation; doing so, we invoke the authority of the federal courts to our constitutional rights to the exercise of our separate quota of peremptory challenges, which your Honor, by your ruling, has denied to us. I might say, for the benefit of the

other defendants, I presume that the objection already made would go to the other counsel and the other defendants as well, and the exception.

That thereupon, the jury having been thus empanelled, they were duly sworn to try the cause, and the following testimony was presented by the Government.

G. W. MANNING, a witness called by the Government, testified that he was the Sheriff of Yamhill County, Oregon, with his residence at McMinnville, and was such sheriff in the year 1927; that in the Fall of 1927, the Hodgsons were living near Amity, Yamhill County; that sometime in October, 1927, he had a report there was a still at the Hodgsons' place; that about 200 feet from the Hodgsons' dwelling house he found 5 or 6, four or five hundred gallon tanks, 2 pressure tanks, 6 or 7 sacks of corn sugar and a quantity of mash buried in the yard; that he went to the house and found Thomas Hodgson and his wife, Mrs. Hodgson, and daughter-in-law, Mrs. Hodgson, the latter 2 being defendants, Gertrude and Elsie Hodgson; that he had a conversation with Thomas Hodgson who told him he thought as though a still had been operated there but that he didn't know anything about it; that about 2 or 3 weeks later he had a talk with the defendant, Walter Tooze, at McMinnville, in the course of which conversation Mr. Tooze asked him what he had found; that later, he had another conversation with him at McMinnville in the course of which Mr. Tooze told him that an indictment had been returned against some 36 defendants, in which he was named a defendant, and he asked him concerning what was found on the Hodgson place

and also that Mr. Hodgson had brought in a jar of what the witness had called "mash" and asked Mr. Tooze if it was mash and that Mr. Tooze informed him that he had told Mr. Hodgson that it wasn't mash; that no prosecution would grow out of the finding of the alleged mash; that no action was taken against the Hodgsons at that time.

ROY R. JOHNSON, a witness called by the Government, testified that he resided in Amity from February, 1926, until August, 1930, during which time he was employed by the Standard Oil Company; that he had met Mr. and Mrs. Frank W. Hodgson at the ranch they lived on about 1½ miles east of Amity; that he called there for the purpose of selling Frank Hodgson some gasoline; that this was sometime in the Fall of 1927; that thereafter he delivered gasoline to him in quantities ranging from 100 to 250 or 300 gallons; that Frank Hodgson and George Moffett would also come down to the Standard Oil plant, at Amity, for the purpose of getting gasoline thereat, and that George Moffett would haul same for Frank Hodgson; that he was paid for the gasoline by Frank Hodgson, his wife, and George Moffett; that sometime in 1929, Frank Hodgson told him that he was moving to Seattle, Washington, where he said he had an automobile park and to bill him thereat; that the gasoline at the plant was delivered to George Moffett who was driving a Republic truck; that the first time he became acquainted with Frank Hodgson was when he called at his ranch and solicited him to buy his gasoline; that he understood that Frank Hodgson had a large ranch near Amity, and

that he was also farming some property for others; that he was operating a gasoline wood saw during that time.

CARLTON L. STALEY, a witness called by the Government, testified that he was a Federal Prohibition Agent since May 1st, 1928, and in October, 1929, was working out of the Portland office; that he knows the defendants, George Moffett, Louis Anderson and Clyde Ullman, who is also known as Art Hines; that on October 3rd, 1929, he went out to a place known as the Fulmer ranch about 7½ miles west of Salem, Oregon; that sometime about 8 o'clock at night he observed a Rickenbacker Coupe, license No. 155006, driving into the Fulmer ranch; that about 20 minutes later, it came out of there and he trailed it to Salem, where he lost it; that the next night, October 4th, he went back to the Fulmer ranch and he smelled the odor of mash and heard the bubbling; that on the next day, October 5th, 1929, he went back to the Fulmer ranch with a search warrant and they found the defendant Louis Anderson there. They broke into the still house and found a 1000-gallon oak still; five 1000-gallon vats, 5000 gallons of mash, an ager for whiskey, and 1050 gallons of whiskey; that while they were there a Republic truck drove up to the place, also a Chevrolet coach. They placed Clyde Ullman, or Art Hines, and Roy Reed under arrest. Art Hines was driving the truck and Roy Reed was riding with him; they also placed under arrest, George Moffett and Margaret Taylor who had come in the Chevrolet coupe. In the truck they found and seized 8000 pounds of sugar and 86 10-gallon oak kegs. The persons arrested were taken to Salem and placed in jail;

that about a day or two later, they had a hearing before the U. S. Commissioner, at which time they were represented by attorneys, Robin Day and the defendant Walter Tooze; that all the persons that were arrested as the result of his raid on the Fulmer ranch, were Louis Anderson, his wife, George Moffett, Roy Reed, Clyde Ullman and Margaret Taylor.

F. E. DODELE, a witness called by the Government, testified that he was a state prohibition agent; that in July, 1929, he was employed by the Government on prohibition work; that on July 26th, 1929, he and Federal Agent Burnett were at north 20th and Vaughn Streets, Portland, when they saw a Republic truck, License No. T081012 bearing the name, George Moffett Woodhauling, Salem, Oregon, drive up to the plant of the Pacific Cooperage Company of 467 N. 20th Street, where it was loaded with some 75 or 80 10-gallon kegs. The defendant, Moffett, was driving the truck. They followed the truck to Salem. The next time they saw the truck was on October 4th, 1929, when it was proceeding north from Salem. They followed it to Lake Labish. There were two elderly gentlemen in the truck, one of them being Mr. Moffett's father. It went over to a wood pile and it was loaded with wood. They saw the same truck again on October 5th, 1929, drive into the Fulmer ranch; that on September 9th, 1929, he, and Federal Agent Herr saw a Chevrolet truck, Oregon license 96260, loading kegs at the plant of the Pacific Cooperage Company in Portland. It was followed by a Ford Coupe, License No. 201057. They followed the truck and car to a place about ¼ mile east of the Ful-

mer ranch on the Salem-Dallas Highway, where the truck and car stopped. The driver of the Chevrolet truck was Ullman and the driver of the Ford Coupe was Roy Reed. They were later arrested at the Fulmer still; that he was with Federal Agent Staley on October 5th, 1929, at the time of the raid on the Fulmer ranch; that while they were there, the Republic truck that he followed came to the road and turned in the ranch; that Roy Reed jumped off the truck, and he was arrested, together with Ullman, who was on the truck. The truck was followed by a pilot car out of which stepped George Moffett and a girl by the name of Taylor, whom they likewise arrested. The Republic truck had on it 8000 pounds of sugar and 86 10-gallon kegs; that the still they found and seized was a large oak still of 1,000 gallon capacity. There were also 5000 gallons of mash in the shed, about 1054 gallons of whiskey and a steam ager. Mr. and Mrs. Anderson, Ullman and Roy Reed, George Moffett and the Taylor girl were placed under arrest and taken to the Salem jail; that on, to-wit: October 7th, 1929, they appeared before the U. S. Commissioner where they were first represented by Robin Day, an attorney, and later by Walter Tooze. Mr. Tooze objected to the amount of the bonds. The car that George Moffett drove was a Chevrolet Coach, License No. 171009.

MR. GOLDSTEIN: If the Court please, for the purpose of the record and in order to get it clarified, I think your Honor has heard enough from the testimony to indicate the difficulty that confronts the many remaining defendants whose names are not even mentioned, even remotely, in

connection with this; so at the close of the testimony of each witness I am advising the Court I propose for myself and for the other defendants who are likewise affected to move that his testimony be stricken out as respecting these defendants, upon the ground that there is nothing to connect them with any evidence that he has given and we propose to subsequently show that no relationship whatsoever was had with that particular incident.

COURT: What you propose to show the time will come for that; confine yourself to the objections to the testimony, not what you are going to show.

MR. GOLDSTEIN: At this time we move that the testimony be stricken out as respect to the defendants whose names have not been mentioned in connection with his observation or examination or contact with any other defendants, on the ground that there has been no evidence of any concerted action or prior agreement or combination that might bind or affect the defendants whose names have not been mentioned, and for that reason no conspiracy has been shown and their evidence is in nowise binding or affecting upon the other defendants whose names have not been mentioned. I might also add in addition to the objections that have been urged by Mr. Stearns and Mr. Hare that the evidence further was incompetent, irrelevant and immaterial upon the ground that the evidence that he gave had no tendency to prove or establish any of the overt acts set forth in the indictment nor come anywhere

near the scope of the conspiracy as alleged in the indictment, and is outside of the issues framed in the pleadings.

Motion denied; exception saved. (49-50)

J. I. ZIMMERMAN, a witness called by the Government, testified that in September, 1929, he was State Prohibition Agent; that on September 30th, 1929, he saw a Republic truck, License No. 81012, on the Salem bridge between Marion County and Polk County, and that he followed the truck to Fulmer Ranch and watched it go in; that it was piloted by a Ford Coupe, No. 201057; that on October 1st, 1929, he saw a Chevrolet Truck, 29260, and a Rickenbacker Roadster, No. 155006 go in the ranch and leave; that on October 3rd, he went to the Fulmer ranch with Agent Staley and saw a Rickenbacker Roadster, No. 155006 and a Rickenbacker Coupe, No. 46527, go in the ranch; that after they left the ranch he followed these cars toward Salem, where they were joined by a Ford Coupe 201057; that on October 4th, he went back to the Fulmer ranch and observed the Rickenbacker Roadster go in; that he was there again on October 5th, the time of the arrest when they arrested a man by the name of Anderson, his wife, and two men that came in the truck, No. 81012, by the name of Roy Reed and Clyde Ullman and a man and woman that came in the Chevrolet Coach by the name of George Moffett and Margaret Taylor; that he was present in Salem at the time they were arraigned before the U. S. Commissioner, at which time the defendants were represented by Robin Day and at the postponed hearing they were represented by Robin Day and Walter Tooze.

MR. GOLDSTEIN: On behalf of the defendant Joe Brown and the other defendants similarly situated, I move that the testimony be stricken out upon the ground that it is incompetent, irrelevant and immaterial and outside the scope of the indictment, and for the further reason that there has been no evidence introduced tending to show the existence of any conspiracy and that the acts and conducts of the various parties mentioned by this witness, not in the presence of other defendants, are in nowise binding upon the defendants on trial, nor have they any relation to the specific charge mentioned in the indictment.

Motion denied; exception saved. (71)

EARL HARTMAN, a witness called by the Government, testified that in 1929 he was a Chevrolet dealer in business at Silverton; that in July 1929 he sold the defendant, Bill Brown, and a man by the name of John Davis a Chevrolet Truck, T-99063; $275 was paid down on the truck by Wm. Brown; that the truck was sold for $822 and was financed through the General Motors Acceptance Corporation in monthly installments of $32.00 a month; that the papers on the truck were signed by John Davis; that he doesn't recognize John Davis among the defendants; that he only saw him but that one time; that he subsequently got in touch with Bill Brown because the payments on the truck were delinquent; that he wrote a letter to John Davis but the letter came back; that he thereupon called Bill Brown on the 'phone and told him; that witness never got any notice of any further delinquencies after he called Wm.

Brown. About 4 or 5 months later, the contract was taken up and he received the cancelled contract and certificate of title to the truck, which he mailed to the defendant, Wm. Brown; that on August 23rd, 1929, he met the defendant, Joe Brown on Foster Road near 82nd Street, Portland, at which time he delivered him a Chevrolet truck, Motor No. T-1009297; that he made this delivery at the telephone request of Wm. Brown; that when he got out to 82nd and Foster Road, he was met by Joe Brown and a man by the name of Lee V. Crane; that the consideration for the truck was $822, which was paid for by check from Lee V. Crane; the negotiations for the truck were carried on by Joe Brown; but that he had nothing to do with the financing of it as Mr. Crane paid the money.

MR. GOLDSTEIN: If the Court please, I move that the testimony of this witness be stricken out on the ground it is incompetent, irrelevant and immaterial and in nowise tending to prove any charges within the scope of this indictment, and for the further reason that there has been no evidence tending to prove any conspiracy or any relation of this testimony to the existence of a conspiracy.

Objection overruled; exception saved. (77)

On cross examination, he testified that he had known Wm. Brown and Joe Brown for 5 or 6 years, first becoming acquainted with them when Joe Brown was running a garage at Hubbard; that he had arrangements with them, whereby they would act as salesmen for him, which arrangement was in effect in 1929; that he paid Wm. Brown a commission of $65.00 for the sale of the

truck to Mr. Davis; that the commission was paid out of the down purchase price; that out of the money that Davis gave him, he deducted $65.00 commission, which he paid to Wm. Brown; that he also sold other cars or trucks through Wm. Brown as salesman and paid him a commission, the same as he did other salesmen; that he had the same arrangement with Joe Brown; that in connection with the truck that he delivered in Portland, he don't know whether the 'phone call came from Joe Brown or Wm. Brown, but in connection with that sale he likewise paid a commission to Joe Brown of $75.00. Altogether he disposed of 5 or 6 cars through the efforts of the 2 Browns; that he still has the arrangement with them, whereby they were to act as his salesmen for Chevrolet cars and trucks. With respect to the delinquent payments on the truck that he sold to Wm. Brown through Davis, he don't know whether the sales were made by Wm. Brown or whether he had anything to do with it.

Q. So the extent of your testimony is simply this, as I gather it, Mr. Hartman, that on one occasion Bill Brown sold a Chevrolet truck through you, to a man by the name of Davis, and Bill Brown got the benefit of the commission?

A. Yes.

Q. And on another occasion Joe Brown sold a truck to a man by the name of Crane, and you gave him the benefit of the commission there?

A. Yes.

Q. And that is the extent of your testimony?

A. Yes. (83)

On re-direct examination, he testified:

This commission that has been testified about in the cross examination, on these two trucks, one sold to Bill Brown—that is, one sold to Davs, through Bill Brown, and the other one to Crane, through Joe Brown, was not paid at all, but was only in the manner of a cash discount on the purchase of the car. was it not?

A. That is true, yes.

Q. And no money was paid to either one of these Browns, by you, on these automobile deals?

A. No, sir. That was taken from the down payment. (84)

On re-cross examination concerning the purchase of the Davis truck through defendant William Brown, he testified as follows:

Q. Now, in your former testimony, you said the money was handed by Mr. Davis to Mr. Brown, and thence to you. Is that correct?

A. Yes, sir.

Q. Was there any money paid by Mr. Davis deducted by Mr. Brown in your presence?

A. Well, there must have been.

Q. Well, was there, Mr. Hartman?

A. Yes, there was. There was $65.00 deduction.

Q. That was taken by Mr. Brown and put in his own pocket, wasn't it?

A. Yes.

Q. In your presence?

A. Yes, sir. (85)

On re-direct examination, he testified as follows:

Q. Do I understand that the amount of the discount allowed these Brown brothers under your arrangement, was paid in cash, or simply a discount off the purchase price?

A. A discount off the purchase price. (85-86)

Q. Now, Mr. Hartman, there seems to have been some confusion over the amounts paid by the defendant William Brown for the car sold to John Davis, that is the truck, on July 31, 1929. Now what was the total down payment credit given to Davis at the time of the purchase of that car?

A. The whole total is $340.00.

Q. How much actual cash was paid you?

A. $275.00.

Q. And who paid you that cash?

A. Brown.

Q. And who gave Brown the money?

A. Davis.

Q. How much money?

A. I couldn't say. I don't know.

Q. And what cash discount was given there at that time?

A. $65.00. (86)

Questions by Mr. Page:

Mr. Hartman, Mr. William Brown did deduct part of the money in your presence, didn't he, out of the money that was given him by Davis he deducted some sum of money, didn't he?

A. Well, he gave me $275.00 out of the money that he received from Davis.

Q. Well, out of the money he received from Davis, in your presence, he deducted some, didn't he?

A. I don't know whether he did, or not. I don't know the amount that he gave him.

Q. Didn't you testify here just before recess, that Mr. Brown did deduct the sum of the money as commission?

A. Maybe I did.

Q. Well, what is the fact about the matter, Mr. Hartman?

A. Davis handed Brown the money, and Brown paid me.

Q. Well, did Brown take any money out of that, or not?

A. I don't know whether he did or not.

Q. You don't recall now whether he did or not?

A. Not positive, no sir.

Q. Have you talked to anyone about this matter during the recess?

A. Yes, sir.

Q. With whom?

A. Mr. Erskine.

Q. Talked about this very matter you have been testifying to now, did you?

A. Yes, sir. (87-88)

JOHN GILLILAND, a witness called by the Government, testified that he became acquainted with the defendant, Rudie Bouthellier, in the spring of 1929; that he merely went around with him being a friend

of his; that he did not have any transaction with him; that he met the defendant, Francis Bouthellier, in the summer of 1929 at the Conradine Hotel, Portland; that about the 1st of August, 1929, he bought whiskey from Francis Bouthellier, for which he paid $7.00 a gallon; that the witness was at that time working for Stevens & Rathkey during the day and at night he was selling whiskey which he was purchasing from Francis Bouthellier; that in the Fall of 1929 he met Frank Hodgson in Francis Bouthellier's room in the Belmont Hotel, Portland; that about a week later, he met Frank Hodgson again in Francis Bouthellier's room; that Francis Bouthellier was buying his whiskey from the defendant, Joe Brown; that about 2 weeks later he saw Frank Hodgson at the same place, at which time Joe Brown, Francis Bouthellier and he were present; that just prior to that time he quit his employment with Stevens & Rathkey and worked for Francis Bouthellier, delivering whiskey from plants located in garages, to which he was directed by Francis Bouthellier. Francis Bouthellier was selling whiskey in lots of nothing under a gallon and nothing over 50 gallons; that he received instructions for the delivery of this whiskey from Francis Bouthellier; that deliveries were made to various individuals and around hotels; that about the 1st of December, 1929, he had a talk with Frank Hodgson in Francis Bouthellier's room in the Belmont Hotel, in the course of which Francis asked Frank Hodgson if he could use the witness as business was poor and he didn't need an extra man; that Frank Hodgson said he couldn't hire him right then, because

he first wanted to find out what kind of a fellow he was; that about the first of December, Frank Hodgson hired him to run a still at $10.00 a day, and that if he ever got knocked over that he would be taken care of and paid $5.00 a day while he was in jail if he had to take a sentence. He was also told that if he was ever to get knocked over he was to notify Frank Hodgson and defendant, Walter Tooze; that he first went to work for Frank Hodgson at the Baker ranch near Stayton, Oregon; that he was taken out there in Frank Hodgson's Kenworthy Truck, which was loaded with 5 tons of sugar; that when he got there, there were Emmons Jelkin, a fellow called "Shorty", and B. Schatz; that about a week later he saw Earl Trowbridge there working on the still; that when he first got there the still was not then operating but he saw about 7 vats of 1300 gallon capacity each full of mash; that when he got there he unloaded the sugar and ran the steam ager; that he aged about 4 gallons the first day; that he was instructed in his duties by the fellow by the name of "Shorty"; that when he left the following night, he came back with Eddy Edwards and went to Francis Bouthellier's place at the Belmont Hotel, Portland; that he came back in a Chrysler car; that after that, he started to haul whiskey from the Baker ranch still; he began doing this 3 days after his first trip there; that he hauled the whiskey in a Chrysler Coupe; that he was so directed by Frank Hodgson and he hauled this whiskey in 50-gallon lots to Francis Bouthellier; that it was unloaded somewhere on Corbett Street, Portland, from which place Francis Bouthellier transferred it into his

Chrysler; that he was hauling the liquor in gallon glass jugs; that he made 2 trips about 2 days apart; that when he went out there for another load, the ager blew up and he got burned; that at that time Frank Hodgson, Emmons Jelkin, Earl Trowbridge and a fellow by the name of Jack were at the still; that Emmons Jelkin was running the still there and Earl Trowbridge was helping and Frank Hodgson was overhauling the burner; that B. Schatz also was there at the time the ager blew up, but he was asleep; that he came back to Portland after the ager blew up, with Emmons Jelkin and Earl Trowbridge in a Chrysler 65 Coupe; that about 10 days after the ager blew up, the still burned down; that he then went to Seattle; that before going there he saw Rudie Bouthellier, Frank Hodgson, Elsie Hodgson, Rex Keene, and Emmons Jelkin in an apartment house on 28th Street, Portland; this was right around the last of December that they discussed going to Seattle and starting up another still there.

Q. What other conversation did you have there?

A. Well, we was all talking about the fire that was out there. We didn't really know where we was going to get money enough to start another one with. We decided on going to Seattle and try to raise it up there. (104)

He went up to Seattle the last of December, 1929, with Rudie Bouthellier. When they got there they went to the Hazel Hotel on Madison Street. Rudie Bouthellier is a brother of Frank Bouthellier. They stayed at the hotel that night and the next day they went to the

apartments of Mr. and Mrs. T. B. Hodgson on Belview Avenue; that there they met Frank Hodgson and Elsie Hodgson; that while in Seattle with defendant, Rudie Bouthellier, was delivering whiskey for the defendant, T. P. Hodgson; that when he referred to Mrs. T. B. Hodgson, he referred to the defendant, Gertrude Hodgson; that he saw the defendant, Joe Brown, on numerous occasions prior to going to Seattle in the Fall of 1929; that he met Joe Brown at the Belmont Hotel about November 1st, 1929, in Francis Bouthellier's room, at which time Frank Hodgson, with Francis Bouthellier, Joe Brown and he were present. He overheard a conversation between Joe Brown and Frank Hodgson; Frank Hodgson needed money and he asked Joe Brown for it and Joe Brown gave him $300.00. The money was to help build a still. After he got to Seattle he stayed with Rudie Bouthellier the first night. From there he went to Mrs. Gertrude Hodgson's apartment on Belview Avenue. There were there T. P. Hodgson, Frank Hodgson, Elsie Hodgson, and himself. He stayed there about a week doing nothing. He started work about January 15th, hauling whiskey for Frank Hodgson to Francis Bouthellier at Portland. He got the whiskey out of Frank Hodgson's plants. Whiskey was hauled in gallon jug containers and was delivered to Francis Bouthellier at 15th Street toward North Portland; he would leave his car outside and go in and tell Francis Bouthellier where to pick it up. Then he would see the car again at the spot where he left it afterwards unloaded, when Francis Bouthellier would come back and tell him where it was. He kept this up

about 2 weeks. Frank Hodgson would tell him where to get his loads of whiskey at Seattle. During all the time he was hauling whiskey he was living in Mrs. Gertrude Hodgson's apartment in Seattle. After he stopped hauling whiskey to Portland, he went to work for Mrs. Gertrude Hodgson, delivering whiskey to the retail trade in Seattle under directions of Mrs. Gertrude Hodgson. His job of hauling whiskey to Portland was taken over by Rudie Bouthellier. He would visit the Washington Spring Works at 1420 Broadway, Seattle, and he would see there Rex Keene, Rudie Bouthellier, Mrs. Gertrude Hodgson and Elsie Hodgson. His purpose in being there would sometimes be to call for Mrs. Gertrude Hodgson or to get a car fixed or to take whiskey orders for delivering. He would deliver the whiskey to hotels and individuals and collect the money for her, which he would turn over at night to Mrs. Gertrude Hodgson. He kept this up about 6 months. He also would make deliveries of whiskey to 31st Avenue, South, Seattle. Frank Hodgson had a still running out there which started to operate on January 20th, 1930. He had nothing to do with getting that location; that Emmons Jelkin and Frank Hodgson did; that the still was operated out there by Emmons Jelkin and defendant, B. Schatz. He was in the house and they had 2 stills operating there. They were 240 gallons apiece. They were located in one room up stairs. There were also there an ager, about 80 barrels of mash, charred oak kegs, and aging irons. He would see Emmons Jelkin there and none others besides the ones he mentioned. He would go there to pick up a load of whiskey. He

was using a Chevrolet Coach, License No. 171405. He hauled 20 gallons of whiskey from there to Frank Kelly, 100th Avenue. That was the only load he took out of there. The license number he mentioned was a Washington license. He had occasion to go to this still on 31st Street on February 20th, 1930, to take a load of sugar and barrels and supplies out, but he didn't get them because the officers were raiding the place so he drove right on by. While in Seattle, he saw the defendants, Joe Brown and Walter Tooze in Gertrude Hodgson's apartments about February 1st, 1930. He was present at the conversation that took place. Frank Hodgson was telling Joe Brown and Walter Tooze what kind of protection he was getting out in Rainier Valley on his still. By protection he meant paying the cops off. Frank Hodgson introduced the witness to defendant Tooze and defendant Tooze asked the defendant Hodgson if he, the witness, was one of Frank Hodgson's men. He didn't remember the rest of the conversation. He was in the room all the time. There were present, Emmons Jelkin, Frank Hodgson, Walter Tooze, Joe Brown and Gertrude Hodgson. After the knock over on 31st Avenue, he was still working for Gertrude Hodgson, and this continued until July 20th, 1930, when he went to work for Frank Hodgson in Portland. He was out to the still at Hoods Canal, which was near Bremerton, Washington. He went out there with Frank Hodgson in his Chevrolet. When he got there, he found Elsie Hodgson, Emmons Jelkin and Paul Richardson. Elsie Hodgson was keeping house. Emmons Jelkin and Paul Richardson were doing noth-

ing. When he got there he found a big house with a 500-gallon still, vats, mash, sugar and barrels. There were 7 other vats of 1300-gallon size. The still was a gas still for manufacturing whiskey. The still was manufactured out of copper, with pipes running both directions. He had seen that still before at 2 places—one on 100th Avenue, in Seattle, and at the Baker ranch near Stayton, Oregon, where they had a fire. He happened to see it out on 100th Avenue, because they had a plant out there and he used to go out there and get whiskey and deliver it and it was then being overhauled when he saw it. It was also overhauled at the Washington Spring Works. He went out to Hoods Canal with Frank Hodgson about the middle of April, 1930. The conversation had with Frank Hodgson concerning the Baker still that he found out in Hoods Canal was sometime in March, 1930, in Seattle, Washington. The still at the Hoods Canal was near Bremerton, Washington. That it was the last of December, 1929, that he went to work for Hodgson in Seattle, and he worked there for about 6 months before he returned to Oregon to work; that he came back to Oregon to work about July 20th, 1930; that the conversation he overheard when the defendants, Joe Brown and Walter Tooze were present was about February 1st,1930; that when he was working in Seattle his wages were paid sometimes by Frank Hodgson, sometimes Mrs. Gertrude Hodgson and sometimes Elsie Hodgson. He would be paid cash money. He worked by the day at $10.00 a day.

After he left Seattle in July, 1930, he came to Portland by automobile with Mrs. Gertrude Hogson.

He stayed there one day and then returned to Seattle. While he was here he went to his sister's place and dropped Mrs. Hodgson off down town. There was nothing in the car at that time. He went back alone the next day. He stayed in Seattle just over night and then came back alone to Portland. He did not bring anything with him. When he came back to Portland, he reported to Elsie Hodgson. Before coming back to Portland he got a Chevrolet and took it to Seattle and traded it for a Willys Knight Coupe. When he came back to Portland, which was about July 22nd or 23rd, 1930, he saw Mrs. Gertrude Hodgson at the Hamilton Hotel, Portland, and she told him to report to Elsie Hodgson who would tell him what to do. He found Elsie Hodgson in the Morris Hotel on July 24th, 1930. He was instructed by her to go out to Rex Keene's home close to Salem and he would take him out to the still. He found Rex Keene in Salem in the Farmers Hardware Company, where he bought some barrels and they went out to the Welter ranch in a Chevrolet Coach on July 26th, 1930. The Welter ranch is east of Salem, Oregon. He was directed there by Rex Keene. On approaching the place they turned their lights out and when they got there they found the same still that was on the Baker ranch and on the Hoods Canal. When they got there the Federal Officers were there, and that was the last work that he did.

He was arrested and taken to jail at Salem and then removed to the Multnomah County jail at Portland, where he stayed for 6 months and 12 days. He had not been sentenced or promised any immunity.

MR. GOLDSTEIN: If the Court please, for the purpose of the record, on behalf of the defendant Joe Brown and other defendants similarly situated, I move that the testimony of this witness be stricken out and the jury instructed to disregard it upon the ground that it is incompetent, irrelevant and immaterial and outside the scope of the indictment and at variance thereto, for the reason that we contend that this indictment charges one specific conspiracy, whereas a number of alleged conspiracies are inferred here and there has been no evidence introduced tending to show the existence of any conspiracy as between my defendants and others similarly situated; all the testimony of this witness concerning the acts were therefore acts and conduct of parties mentioned by this witness not in the presence of the other defendants, and are in nowise binding upon these defendants now on trial nor has the testimony of the witness any relation to the specific charges mentioned in the indictment.

Objection overruled; exception saved. (127)

On cross examination by Mr. Ryan, stated he did not know the defendants, Barahan or Dascolas.

On cross examination by Mr. Handley, he stated that while in jail he wrote a letter to Assistant U. S. Attorney Erskine asking to see him; that a day later, he saw him. At that time Frederick Demsey was his attorney, but he was not with him when he talked with Erskine. He told Mr. Erskine he wanted to get out of jail, and that he wanted to tell him everything he knew because

he had been in jail 4 months at the time and nothing was done for him. He figured he wasn't being treated fair because no one had ever been to see him and no bond had ever been raised for him, which had all been promised. He did not remember Mr. Erskine telling him that he would not get the Island. He remembers an occasion when he went to Mr. Handley's office in the Spaulding Building, in Portland, at which time his attorney and the stenographer were present.

Q. Do you there remember of telling us voluntarily that Mr. Erskine told you that if you would tell your story in court he could not guarantee you any immunity because Judge Cavanah was going to try the case and he did not know whether Judge Cavanah would accept his recommendations as the Oregon judges did, but he would assure you that you would not go to the island. You made that statement, didn't you?

A. No, not exactly that statement, no.

Q. What was the statement you made?

A. Was nothing said about Judge Cavanah that I remember.

Q. Then excluding from my question the reference to Judge Cavanah did you make that statement?

A. After I made my written confession, yes, I asked Mr. Erskine what he thought I would get and he said he didn't think I would make the island.

Q. You haven't answered my question. I asked whether or not you made that statement to us.

A. Yes.

Q. You made that statement to us, didn't you?

A. Yes, sir.

Q. Was that statement true when you made it to your attorney?

A. Yes.

Q. It was true at the time you made it?

A. Yes. (130-131)

That he was not testifying because of that promise, but because he had already signed a written statement, which he did to get out of jail; that he got out of jail 2 months later, at the request of Mr. Erskine. He did not understand that because of his statement he would have consideration from Mr. Erskine's office if he would testify, but that he testified because he felt as though he wasn't being treated right by the people he was working for who at the time he went to jail was Mr. Frank Hodgson; that he was 25 years old and had been engaged in the liquor business for about 1½ years; that he was not in the liquor business when he first met Frank Bouthellier; that when he first started in he was buying liquor off Frank Bouthellier; that he met him in the Conradine Hotel about the latter part of July, 1929; that he was not engaged in any liquor transactions at that time, and that the first time he had any such transaction was about the last of September, 1929, at the Gladstone Apartments on Grand Avenue near Davis, Portland, Oregon, when he delivered him a gallon of whiskey which the witness paid. About a week later, at the same place, he delivered him another gallon of whiskey which he paid and thereafter met him on numerous occasions at his room in the Belmont Hotel. It was

Francis Bouthellier's room but, he, the witness, paid for it under the name of and as Jack Doland; that at the time he rented the room he was working for Francis Bouthellier delivering whiskey. After he bought the whiskey he started to work right after that which was about the middle of October, about the time he registered under the name of Jack Doland. He started to work for him a couple of days before that. He worked for him about a month or a month and a half, delivering whiskey for him to various hotels and individuals around town from one to fifty gallons; that he delivered whiskey to him when he was working for Frank Hodgson.

Upon cross examination by Mr. Hare, he stated he was first employed by Francis Bouthellier, second, by Frank Hodgson, third, by Gertrude Hodgson, the mother of Frank Hodgson. With respect to his employment by Hodgson he was to get$10.00 a day,and in the event he was arrested $5.00 a day, and that if he ever got in trouble he was to notify Tooze, who, he said, was representing him, and that he was substantially told that if he got in trouble to employ him and that he, Frank Hodgson, would pay the bills. He was arrested on July 26th, 1930, and taken before the U. S. Commissioner at Salem; that he remained in Salem 4 days in jail. He did not notify Tooze while in Salem because he was expecting to go to Portland the next day, but didn't go for 4 days; that he met Tooze in Seattle, at which place there was present Emmons Jelkin, Mrs. Hodgson, Brown and Hodgson. Conversation was had about the 20th, 1930, or around the last of January or the first of February. He could not be specific as to the

date. Frank Hodgson told him that Tooze and some other attorney had bought the still back from someone at Stayton. With respect to his conversation in Mr. Handley's office, he told Mr. Handley that Mr. Erskine didn't think he would make the island, when he asked him what he thought he would get when he was sentenced. This was told him after he had made the statement.

Upon cross examination by Mr. Critchlow, he first met Rudolph Bouthellier in the Spring of 1929, through his wife. He met him about 3 or 4 times a week. They were just friends and their friendship continued for 2 or 3 months. There were no liquor transactions of any kind between them, but were purely of a social nature. Outside of the times when they would switch loads of whiskey while they were working for different outfits that 7 of these occasions happened in 1930 when they would switch loads of whiskey. The switches were made in Seattle and around the 10th of February, 1930; that was after he met Tooze and Brown in the apartment in Seattle. The witness would use a Chevrolet Coupe, Washington license, 171405, while Rudolph Bouthellier would use an Oldsmobile Coupe, Washington license; that he made a trip to Seattle with Rudolph Bouthellier in the latter part of December, 1929; that when they arrived in Seattle they went to Rudolph Bouthellier's room at the Stewart Hotel. He was not hauling whiskey at that time. He was idle between the 28th of December and January 20th, and during that time was living off the charity of friends. He was staying in Mrs. Gertrude Hodgson's apartment and accepted her hospitality

during that time. He worked in Seattle, delivering liquor for about 4 months after January 20th, 1931. Made only one trip to Bremerton, Washington, where the still was, but it was not in operation; that besides the switched loads of liquor with Rudolph Bouthellier in Ranier Valley, he didn't recall any others; that Rudolph Bouthellier told him he was working and dealing in liquor himself. He was also with him delivering whiskey around Seattle. Had delivered liquor on one occasion to the Reynolds Hotel. He got his liquor from a plant in the garage. The Hodgsons owed him about $200 or $250, when he went to jail; that Rudolph Bouthellier would go into Gertrude Hodgson's apartment and get orders from her.

Q. All you know, you couldn't say of your own knowledge that Rudolph Bouthellier was acting for anybody in the liquor business except himself, could you?

A. Yes, sir.

Q. How do you know?

A. By seeing all the actions, and everything.

Q. What?

A. By seeing the actions and everything.

Q. What were those actions? Just tell what they were that would make you know that he was an employe and not an independent liquor dealer.

A. Well, he would go into the apartment there and get orders from Mrs. Gertrude Hodgson.

Q. Now just tell on what occasion that happened.

A. Well, it was happening a little after the first of January. He was going in there and getting orders. (157)

Upon cross examination by Mr. Goldstein, he testified that he didn't know Victor Scholz, nor have any business dealings with him; that he did not know Louis Anderson, nor have any business dealings with him; that he had heard of Art Hines, but never had any business dealings with him; that he didn't know George Moffett nor ever have any business dealings with him; that he did not know Zielenski or have any business dealings with him; that he didn't know LaJesse, or Jack Kelly, or Daskalos, or Barahan, or Alstott, or Mooney, or Hershey, or Hahn, or Short, or Andreatos, or Aperges, or Wolf; that he knew Earl Trowbridge, but had no business dealings with him; that he did not know Mussorafite; that he, the witness, was one of the defendants, and that all he knows is that he plead guilty to conspiracy.

That he hadn't plead guilty during the 6 months whil he was in jail, because he was waiting for the people he was working for to do something for him, and because they did not he plead guilty; that the first man he told his story to was Mr. Erskine and if Mr. Hodgson had taken care of him he would not have said anything to Mr. Erskine; that he got out of jail 2 months after he made the statement; that he got out on February 9th, since which time he hasn't been doing anything; that he put up no bail; that since that time he saw Mr. Erskine to see if he couldn't be sentenced so that he could go up to Alaska. He expected the sen-

tence to be a release; that before he went to work for Bouthellier he was engaged in selling liquor to others on his own hook and this was before he had any business connection with any of the defendants; that while he was working for Francis Bouthellier he picked up some loads for him from Joe Brown at his house on Foster road. This was in the early Fall of 1929, after he had met him at the Belmont Hotel. His business relations consisted only with the Bouthelliers and Hodgsons, nobody else, and with respect to any of the other defendants whatever they did in connection with this business, so far as he knows, it was separate and distinct from the business he was doing for Hodgson and Bouthellier.

On cross examinaion by Mr. Helgerson, he testified that he first met Frank Hodgson in Frank Bouthellier's room in the Belmont Hotel in the Fall of 1929. The witness was there registered under the name of Jack Doland. He has also gone under the name of Jack Whitney. He also has gone under the name of Robert Valee, Jack Reynolds and Jack Goodwin; that the still that they had operated on the Baker ranch near Stayton was the same still that he saw on 100th Avenue in Seattle, because it was all charred and burned, and the pipes on it the same way, made out of the same stuff, same dimensions and looked like the same still. It was also the same still that was set up on Hoods Canal after being welded together in Seattle. He also saw that still on the Welter ranch where he was arrested.

Upon cross examination by Mr. Long, he testified that, he didn't know James Short, and the person he referred to as "Shorty" is not Short.

Upon cross examination by Mr. Page, he testified that he had only met William Brown once, had no business dealings with him, and that one occasion was after the indictment had been returned when he was in jail.

Upon re-direct examination, he testified that he once went out to William Brown's place with Emmons Jelkin; that he took some charred oak barrels there; that this was in July, 1930, and was at Broad Acres, Oregon; that the letter he wrote to Mr. Erskine about wanting to see him was in November, 1930, and was introduced in evidence by the Government as its Exhibit I, which reads as follows:

"U. S. Attorney,

Mr. Chas. Erskine.

Dear Sir:

Am writing you in regard to my trial, would like to see you, and talk to you in the near future. Hoping this will meet with your approval, I remain,

JOHN GILLILAND,
Care County Jail."

that in response to the letter he was brought down to Mr. Erskine's office; that Mr. Erskine asked him if he had an attorney and was advised to see him, and to get a written statement for him to testify and tell what he knew; that he received such a letter from his attorney; that after he received this letter from his attorney, he told Mr. Erskine the whole story; that he was not promised anything; that after he made his first statement, he pleaded guilty about 2 months later; that at

the time he was released on his own reconizance; B. Schatz and Rex Keene were also likewise released; that he was up in Handley's office about 2 weeks before the trial. He went there at the request of Francis Bouthellier and had a Government subpoena at that time and is now testifying in response to same.

Upon cross examination by Mr. Robinson, he testified that on November 28th, the day after he wrote the letter to Mr. Erskine, which was reduced to writing and was signed by him, and then was returned to the County Jail and thereafter made a second statement; that at the time he made his first statement, he told all he knew about the matter; that he was asked to make a second statement by Mr. Cahoon of the Department of Justice; that he told Mr. Cahoon he wanted to tell some more that he had left out; that he made a second statement on the 29th; that during the 2 months thereafter before he entered his plea he was willing to plead guilty;

Upon further cross examination by Mr. Page, he testified that with respect to his trip to Wm. Brown's house in July, 1930, he did not see Wm. Brown there; that he went there at the request of Emmons Jelkin; that he took 4 charred oak barrels there; that he was told it was Wm. Brown's place by Emmons Jelkin.

On further re-direct examination by Mr. Erskine, he testified that if he gave this second statement he signed it about 3 weeks later. It was signed on February 5th and was released on February 9th.

LEE V. CRANE, a witness called by the Government, testified that he is employed as a City Fireman in the City of Portland; that he met the defendant, Joe

Brown, about 4 or 5 years ago; that he met the defendant, Joe Brown, about the 1st of August, 1929, at the Thurkelson Motor Car Company, 13th and Morrison Streets, Portland. He wanted to know if the witness desired to take a contract on a Chevrolet Truck that a friend of his, a farmer, was going to purchase from an out of town dealer at Silverton.

MR. GOLDSTEIN: I move this testimony be stricken out as being incompetent, irrelevant and immaterial, and does not contemplate any of the means alleged in the indictment as having been employed in furtherance of the conspiracy. There must be some relevancy and materiality to the testimony, to the charge which the defendant is called upon to meet. This apparently appears to be a matter of financing with respect to an automobile, which is a purely legitimate enterprise.

COURT: I cannot tell until I hear what it is. Overruled.

MR. GOLDSTEIN: Exception. (207)

That after he had this conversation, he went with Joe Brown to Joe Brown's Garage on Foster Road and met a man there by the name of Hartman with a new Chevrolet truck. Joe Brown paid $350 cash, which was his friend's down payment on the truck, and the witness paid the balance in full to the man who brought the truck; he then took the finance paper on the car to cover the balance that he paid. There were no payments made on the paper as the truck was seized by the Sheriff at Hillsboro; that he went there and saw the truck and it was the same truck that he helped finance.

MR. GOLDSTEIN: If the Court please, for the purpose of the record, I renew my motion that the testimony given by this witness be stricken out, on the ground it is incompetent, irrelevant and immaterial, as not tending to support any of the issues within the scope of the indictment, and the means of the formation of the conspiracy, as stated in the indictment, and having no tendency whatsoever to establish anything else than a legitimate transaction with respect to the financing of an automobile, that is not alleged in the indictment as being one of the means of bringing the consummation of this illegal conspiracy.

MR. ERSKINE: If the Court please, we will connect this up and show that the truck was apprehended, and what was in it at the time it was apprehended.

COURT: Denied.

MR. GOLDSTEIN: Exception. (209-210)

Upon cross examination, he testified that he deals in automobile paper on the side and knew Joe Brown by virtue of the fact that he was in the automobile business at Hubbard; this was the only car he financed for Joe Brown. It was his understanding that Thurkelson Motor Car Company had business dealings in connection with the sale of automobiles by and through Joe Brown; that he took the title of this truck in his own name.

EMMONS JELKIN, a witness called by the Government, testified that he knows the defendants, Walter Tooze, Joe Brown, Wm. Brown, Elsie Hodgson, Gert-

rude Hodgson, Frank Bouthellier, Rudolph Bouthellier, Earl Trowbridge, and Nick Mussorafite; that he first met Frank Hodgson in the Spring of 1929; that he went to work for him on November 8th or 9th, 1929; that a month before that he was working at a service station and Frank Hodgson offered him a job of driving for him. He wanted him to haul whiskey from Portland to Seattle. He was to get $10.00 per day and expenses. He continued to work for Frank Hodgson until July 7th, 1930; that the first work he did for him was setting up a still on the Baker ranch near Stayton, Oregon. He was assisted by a fellow by the name of Roy, Frank Hodgson and the defendant B. Schatz. It was 500 or 600 gallon still. It was constructed like a boiler with flues; that they started to operate there about November 15th, or 20th, 1929; there were nine 1300-gallon vats there. He was taught to operate the still by Frank Hodgson and Rex Keene; that from December 1st, he hauled whiskey away from the place, receiving directions from Frank Hodgson. He used a Ford truck, an Oldsmobile Coupe, and a Chrysler Coupe. He took one load to Dallas, accompanied by Elsie Hodgson, who directed him where to go. There were five 10-gallon kegs. He also took one load to Wm. Brown's place at Broad Acres. He had previously been there with Frank Hodgson and knew where to go. He took one load of 50 gallons. He followed Bill Brown's car who piloted him to Tillamook, Oregon. Bill Brown was driving a Chevrolet Sedan. The liquor was delivered to some farmer and he was directed where to deliver it by Bill Brown. The still on the Baker ranch was operated until

December 20th, 1929, and this trip to Tillamook with Bill Brown was during the time the still was in operation on the Baker ranch. He had been to Bill Brown's place before that time when Frank Hodgson and he took a load there one evening. This was about the latter part of November, 1929. They hauled five 10-gallon kegs of whiskey, and that Bill Brown received it. He also took a truck load with Frank Hodgson of about 60 gallons to the defendant, Earl Trowbridge, which was placed in his car. There was some left and it was delivered to Bill Brown. There was about 100 or 120 gallons delivered to Bill Brown, he being the defendant, Wm. Brown. He delivered a load to Francis Bouthellier of 50 gallons in jugs in Portland between November and December, 1929. Frank Hodgson was with him. The delivery was made in an Oldsmobile Coupe. They exchanged cars. While at the Baker ranch, John Gilliland came out there to relieve them. He was out there to get a load of whiskey and take the witness back to Portland. Besides himself and Frank Hodgson, Rex Keene and Elsie Hodgson hauled liquor from the Baker ranch. Rex Keene usually hauled the liquor to a cache at 82nd and Foster Road, Portland, Oregon. He also saw Gertrude Hodgson at the Baker ranch. This was sometime in November or December, 1929. She and her husband, T. P. Hodgson, were there for a short while. They looked at the still and left. They mentioned something about the "good looking outfit" they had. The defendant, Earl Trowbridge, was there at the still helping operate same. He was not there at the time they had the fire. After the fire he stayed at the apartment

of Elsie and Frank Hodgson on East 28th Street, Portland, until the first part of January, when he went to Seattle. The fire at the Baker ranch occurred on December 20th, 1929. The only conversation material to the case that he recalls at the apartment was Frank Hodgson was going to Seattle to try to get started again; that he, Frank Hodgson and John Gilliland, went to Seattle about the first part of January, 1930, and when they got there went to Mr. and Mrs. T. P. Hodgson's apartment; that about January 15th, he went to work for Frank Hodgson there operating a still; between January 1st and January 15th, he hauled one load from Portland to Seattle. He got the load from Francis Bouthellier consisting of 50 gallons in glass gallon jugs. He got the load at the direction of Frank Hodgson. On January 15th, he started working at a still for Frank Hodgson which was located at 31st Ave., Seattle; that the place on 31st Avenue, South, Seattle, where the still was located was purchased by him and T. P. Hodgson, and the still was installed at that place by Frank Hodgson, himself, and Schatz. Later on, there was some work of soldering done on the still by T. P. Hodgson. About the first of February, 1930, they installed another still there. There were two 140-gallon stills located upstairs in the house. The second still was installed by Frank Hodgson, Schatz and himself. He worked on those stills there at 31st Ave. until February 22, when he went to Portland and while he was in Portland, the place got knocked over. While operating the still at 31st Ave. he made deliveries of liquor. He would meet either John Gilliland or Rudolph Bouthellier, and

they would transfer the loads or they would take it to a cache located in different garages around the city. During the first part of the operation of the still, most of the delivery was made to John Gilliland and later to John Gilliland and Rudie Bouthellier. The deliveries varied from 40 to 80 to 100 gallons. After the raid on the stills on 31st Ave., Seattle, he stayed in Portland until April 16th, 1930, during which time he was staying with his folks doing nothing. On April 16th, he went back to Seattle to Mrs. Gertrude Hodgson's residence on 17th Ave. and he saw there T. P. Hodgson and John Gilliland and Mrs. T. P. Hodgson. He then went to work for them, leaving that night for Maple Point, Hoods Canal near Bremerton, Washington. He was taken there by Rex Keene and Frank Hodgson; that when they got there they found 7 vats of 1300 gallons each, part of a still, and 3 of the vats already set with mash. The still was not completely set up, but was completed the next day after he arrived. Frank Hodgson and he completed setting it up. When he got there, nobody was there but later there came Elsie Hodgson, Rex Keene and Rudolph Bouthellier. Elsie stayed there until they moved on May 8th or 9th, 1930. The still was of the capacity of 500 or 600 gallons and was constructed as the one on the Baker ranch. It was the same as the one they had on the Baker ranch, except that they had to build a new dome. Frank Hodgson and he had a conversation about the still, in the course of which he said he bought it from Walter Tooze who bought it from a constable or deputy in Stayton, Oregon, and that he had paid $500.00 to get it back. He operated the

still practically all the time he was there. The liquor from there was hauled by Frank Hodgson, Rex Keene and Rudolph Bouthellier. Made several trips. Most of the liquor went to Joe and some went to Seattle. Rex Keene hauled the liquor to Seattle and Joe and Rudolph Bouthellier hauled mostly to Portland. Rudolph Bouthellier used an Oldsmobile Coupe, with a Washington license. He had a conversation with Rudolph Bouthellier at Maple Point, where they had a still across from Union City, Washington, the latter part of April, 1930, concerning a load of liquor he was taking on the Oregon side of the Longview Bridge where he met Joe Brown; that he had taken this load down toward Astoria, Oregon, and later he found that the two men they had delivered it to was Grant and Moon. He took a 50-gallon load in 10-gallon kegs. The capacity of the still that he was operating there was about 100 gallons a day. The still was moved back to Oregon. He helped Rudie Bouthellier load the truck and helped him drive one of the trucks back to Portland. The vats were torn down and loaded into the trucks. Each stay of the vat was put into bundles and numbered. The still and equipment was transported to Portland by means of one load in a Ford truck and another load in a Chevrolet truck. The still was torn down about May 8th or 9th, 1930, and that same night they moved out. He came down with Rudolph Bouthellier, who was driving the Chevrolet truck and which hauled the dome of the can and the biggest part of the vats. When they came to Portland, they went to the Morris Hotel and the truck was put in a garage on Sixteenth and Alder Streets. He went to

the Morris Hotel because it was a hangout for the boys who were working for Frank Hodgson. Elsie Hodgson, Frank Hodgson and Rudolph Bouthellier and himself all came down together and went over to the Morris Hotel. They had rooms there. He next started to work for Frank Hodgson about May 12th or 13th, 1930, on the Zielenski ranch about 5 miles from Scio, Oregon. Rudolph Bouthellier took him out in an Oldsmobile Coupe which was the same car that he had hauled liquor to Joe Brown in. When he got to the Zielenski ranch they found the same still and vats that they had on the Hoods Canal and also at the Baker ranch. When he got to the Zielenski ranch they found Paul Richardson, the Cameron family and the Webb family. He helped Richardson finish setting up the still and helped him run it off. There were 3 vats of mash set. They operated the still there until July 7th or 8th. He worked on the still the first couple weeks, then started in hauling supplies —whiskey. He hauled the supplies in a Chevrolet truck and a Ford truck and got these supplies—part of the sugar at the Union grocery and part from the defendant, Mussorafite, whose place of business was on Division Street, Portland. The first time he got his supplies from him was the latter part of May, 1930. He was supposed to bring in whiskey to him and take out sugar and supplies. The only part he took was to take over a sample to give him so that he could test it to see if the whiskey was all right to trade for his supplies. This did occur after the test was made. He took a sample over to Mussorafite the latter part of May, 1930, and was accompanied by a man by the name of Garrett. Mus-

sorafite told him when he took the sample that the whiskey was all right, but it didn't have high enough test and Frank Hodgson had bought a few testers from him before. They tested it with one of his testers and it was lower than it should have been. Mussorafite said they should have to make it a little better than that. After he had taken this sample over, he delivered 30 gallons of whiskey to him about the 1st part of June, 1930, and after that got 32 sacks of sugar from him, also gallon jugs, 12 cartons one time. Mussorafite conducted a regular malt shop, all sorts of malt, sugar part of the time, and whiskey testers. The sugar was cane sugar. He also delivered liquor from the Zielenski ranch to Tillamook to Joe Brown. This was in June of 1930. He took one trip of 50 gallons, another trip of 120 and another trip of 50 gallons. He got his instructions from Joe Brown where to take it. He had met Joe Brown in Elsie Hodgson's room at the Morris Hotel and on each of the occasions they took the liquor to Joe Brown that was where he received his instructions. The first trip he made to Tillamook where he delivered liquor to Joe Brown was in June, 1930. He met him near Tillamook. The witness went in a Chrysler Coupe. After he got to Tillamook, Joe Brown showed him where to take it and helped him unload it. It was taken to a little farm house just on the outskirts of Tillamook. About a week after that, took a load of 120 gallons to Joe Brown from the Zielenski ranch under instructions of Joe Brown whom he met at Grand Ronde and followed him to this side of Tillamook and then followed him through Tillamook to a place half way between Tillamook and Seaside where

they cached it in the brush. Brown was driving a new Ford Coupe. About the first of July he delivered another 50 gallons from the Zielenski ranch to Joe Brown from whom he received his instructions at Elsie Hodgson's room in the Morris Hotel. He took part of the liquor to Tillamook and the rest of it to Astoria. The witness went in a Chrysler Coupe. Joe Brown told him to leave part of the load in Tillamook and he was to meet a couple of fellows where he dumped off the truck load of liquor and to give them the rest. He dumped off 20 gallons at a place outside of Tillamook. He had 30 gallons more with him, which he took to Astoria and cached in a private garage, then returned to Portland. While working on the Zielenski ranch from May to July, 1930, saw the defendant, Wm. Brown. On one occasion a truck broke down not far from this place, and the witness had the truck towed to Joe Brown's place and repaired it there and cached the sugar there. Bill Brown helped him and Carl Thompson. The still at the Zielenski ranch was moved out after July 7th, 1930, and moved to the Welter ranch outside of Stayton. He quit after July 7th and stayed around home. While working at the Zielenski ranch, he was stopped while going through Oregon City with a truck load of sugar, because he was over-weight. Had no certificate of title to the car and didn't have a driver's license. He was locked up and he notified Frank Hodgson, when an attorney came down to represent him. The arrest was made the last part of June, 1930. He was put under a $100.00 bail, and that was all there was to it. The bail was put up by Joe Brown. He also went out to Wm. Brown's

place with Frank Hodgson to get some money. This was in June, 1930. Hodgson said he had to have money to buy gas and kegs and he received $110.00 from Wm. Brown.

MR. GOLDSTEIN: If the Court please, on behalf of the defendant, Joe Brown, and other defendants similarly situated, I move that the testimony of this witness be stricken out, and the jury instructed to disregard it, upon the ground that it is incompetent, irrelevant and immaterial, and outside the scope of the indictment, and at variance thereto, in that it relates to other isolated transactions not connected with the one specific conspiracy charge, and for the further reason that there has been no evidence introduced tending to show the existence of any conspiracy as specifically charged between my defendant and defendants similarly situated, and the parties affected by the testimony of this witness, and that therefore, the acts and conduct of the parties mentioned by this witness not in the presence of the other defendants, are in nowise binding upon the defendants now on trial, nor has the witness' testimony any relation to the specific charge mentioned in the indictment.

Motion denied. Exception saved. (252)

Upon cross examination by Mr. Ryan, witness does not know the defendants, Barahan and Dascolas, and never had anything to do with them.

On cross examination by Mr. Goldstein, he testified that he also went under the name of Henry Miller while stopping at the Morris Hotel, also under the name of

Frank Campbell while working on the Zielenski ranch, and also by the name of Froberg while working in Seattle.

Q. As I understand it, you were working for Hodgson?

A. Yes.

Q. Is that correct?

A. Yes.

Q. You were receiving your instructions from him?

A. Yes, when I was working for him.

Q. You were receiving your pay from him?

A. Oh, I didn't receive all of it from him.

Q. From who else?

A. I received $75.00 from Mrs. T. P. Hodgson one time.

Q. That is his mother?

A. Yes.

Q. And from whom else? Forgetting?

A. No.

Q. That is all, is it?

A. That is all I received any pay from.

Q. All right. Then we get it from you that you were in the employ of Frank Hodgson, and received your pay from him and his mother?

A. Yes, sir.

Q. You received your instructions from them, and from none other?

A. I have received instructions from Joe Brown.

Q. From Joe Brown. Who advised you to take instructions from him?

A. Well it just seemed to be all right if he gave us instructions.

Q. Answer the question, you understand it.Who advised you?

A. Well, he was getting the biggest percentage of the liquor—

Q. Can't you answer the question? And if nobody advised you, say nobody. If anybody did, mention it.

A. I guess Frank Hodgson.

Q. You just thinking about it right now, or you knew it all the time?

A. Well if it was all right with Frank—

Q. Did you receive any specific instructions from anybody to take instructions from anybody but Hodgson?

A. I don't get that.

Q. Did you get any instructions from Frank Hodgson, or his mother, from whom you were receiving your pay, to take any advice or instructions from anybody else?

A. No.

Q. That is the only ones that you were associated with, as you testify that you were employed by Hodgson, and that you were working with a man by the name of Gilliland, and making a delivery to Brown, and to who else?

A. Oh we made deliveries to Brown, Francis Bouthellier.

Q. Who else? As a matter of fact, Mr. Jelkin, you understood throughout your connection with this undertaking, that you were acting for and on behalf of Frank Hodgson, independently of anybody else; that is correct?

A. Yes. (255-256)

He knows Victor Scholtz, but had no business dealings with him. He had heard of George Moffett and had heard that he worked for Frank Hodgson at one time, but in all his dealings with Hodgson had never had any business dealings or transactions with Moffett. Had heard of Art Hines, and his only business dealings with him was that he worked on his car. He never had any liquor dealings with him, but was told by Frank Hodgson that Art Hines had worked for him at one time. Had never heard of Louis Anderson, and had had no business relations with him, and as far as he knew he had none with Hodgson. Never heard of LaJesse other than what he read in the papers. Witness was in the confidence of the Hodgsons and they told him their business right along and had no business relations with Dascolas. Had heard of a Mr. Kelly, whom Frank Hodgson told him was a customer in Corvallis, but who was not the defendant on trial. As for Palmer Peterson, on one occasion showed him where he had 20 gallons of whiskey cached, and he was to come back later and pick it up. He was supposed to be a new customer. Did not have any business relations with Paul Maras. Does not know Alstott or Hershey, or Short, or Aperges, or Benakis, or Barahan, or Andreates. As for Wolf, he gave him some liquor when he came out to the Zielenski

ranch. He was arrested for his part in this case and taken to the County Jail where he stayed for 10 days and then was released. He made and gave 2 separate statements to the Government. He testified before the Grand Jury. He was anxious to secure immunity and communicated that fact to his folks.

Upon cross examination by Mr. Robinson, he stated that his folks advised him to make a statement, and that it wouldn't do him any harm. The still at the Zielenski ranch turned out about 100 gallons of whiskey a day. The 32 sacks of sugar he secured from Mussorafite contained about 3200 pounds. The rest of the suger he needed to operate the Zielenski still he secured from a wholesale grocer in Portland. 32 sacks of sugar would set up 2 vats and run about 320 gallons. The still at the Zielenski place was run from the middle of May until July 7th or 8th, and ran proximately 20 days a month. He delivered 32 gallons of liquor to Mussorafite. Frank Hodgson was there to receive it at Mussorafite's place. The liquor was put in Mussorafite's garage. Besides delivering the 30 gallons of whiskey that day to Mussorafite he had part of another load he gave to Francis Bouthellier. Mussorafite wasn't there to receive the liquor although he had delivered the sample one gallon to him before for testing. It was the custom of the trade to bring it in gallon samples.

First met Rudolph Bouthellier in Seattle, the first part of January, 1930. He was delivering whiskey for T. P. Hodgson and was with him a couple of trips when he was delivering. Also saw Rudolph Bouthellier at Maple Point, he was delivering whiskey out of there and

he helped set up the mash for the manufacture of whiskey at Maple Point every day or two when he, Rudolph Bouthellier was at the still for a load of whiskey.

Upon cross examination by Mr. Long, witness stated that he has been engaged in liquor traffic since September 8th or 9th, 1929; that during that time he never met a man by the name of J. Rutledge or James Short, and that when confronted by the defendant stated that he didn't know him and didn't believe he ever had any business dealings with him.

Upon cross examination by Mr. Helgerson, testified that around December, 1929, he accompanied Elsie Hodgson to Dallas with 50 gallons of whiskey. They travelled in an Oldsmobile Coupe. The liquor was taken to a farm on the outskirts of Dallas and it was delivered to a man known as the "glass-eyed goat". That he lived at the Morris Hotel under the name of Henry Miller and Frank Campbell. He might have registered there under the name of Mr. and Mrs. Frank Campbell. On one occasion, Elsie Hodgson hauled some liquor from the still at the Baker ranch. It was after Mr. and Mrs. T. P. Hodgson made their visit there and she brought the Chrysler Roadster and loaded it with 50 glass jugs of whiskey. He saw her get in the car and drive away with it. Has been in the liquor business since February 8th or 9th, 1929. Once went with Mr. Means, Prohibition Agent, toward Oregon City, at which time he pointed out to him where they used to have their still, off of 82nd Street near Clackamas. Also testified for the Prohibition Agents in Seattle.

Upon cross examination by Mr. Page, stated that

he left the employ of Hodgson about July 7th or 8th which was subsequent to arrest in Oregon City on June 28th or 29th. The bail there was put up by Joe Brown. First time he met Wm. Brown was at his ranch in the month of November, 1929, when he was accompanied by Frank Hodgson. He made no delivery of whiskey at that time. He did make a delivery there during the month of November, when he, Frank Hodgson, and Bill Brown took a load out there and cached it and another time he drove in with a load there and followed Wm. Brown to Tillamook. Has been to the residence of Wm. Brown about from 8 to 10 times. Once made a trip out there with John Gilliland about July 2nd or 3rd, 1930, when they took out there 4 empty kegs. In connection with the trip he made to Tillamook with Wm. Brown, he met him at his home the latter part of November, 1929. His visits to the Brown home covered a period from November, 1929, until July 2nd, 1930.

Upon re-direct examination, he testified that he went to Seattle because he was subpoenaed by the Government, whereupon the following question was propounded, objection noted, overruled, and exception taken.

Q. Now about this going to Seattle to testify. Why did you go up there?

A. Was subpoenaed.

Q. By whom?

A. Must be by the government.

Q. For what purpose?

MR. GOLDSTEIN: It seems to me this is a collateral matter, and I object on the ground it is incompetent, irrelevant and immaterial. It is suffi-

cient for him to testify that he went there as a witness under subpoena but the purpose of it would not have any bearing in this case. He explained the reason, and the details would not be material here, explained the reason he went with the government agent.

MR. ERSKINE: If your Honor please, this witness has been questioned about his running around the country with various government agents, and I thought the jury should know what business he had.

Objection overruled. Exception saved.

Q. What was the purpose of your trip to Seattle?

A. To testify for the government in a case against Mrs. Gertrude Hodgson. (310-311)

JACK GRANT, a witness called by the Government, testified that between March 24th and May 5th, 1930, he was working for the Prohibition Department as an investigator. He was under a contract at a salary of $5.00 a day and $4.00 when out of town for expenses; that his contract lasted 2 months and 7 days, the first contract being 7 days, the next one for 10 days, the next for 30 days, and the next one for 30 days; that he had likewise worked for Mr. Newell, Prohibition Director, sometime in 1929; that on the day he went to work for Mr. Newell on March 24th, 1930, he went to work for the defendant, Jack Kelly, delivering liquor to his place from the cache. He was directed to the cache by the defendant, Victor Scholtz to a cache on the Lesser Road 8 miles from Terwilliger Blvd., where he secured 10 gal-

lons of moonshine and brought it to Room 302 in the Ramona Apartments, Portland, Oregon. It was for Jack Kelly. Victor Scholtz took orders from the defendant, Joe Brown. He don't know how Joe Brown was contacted with. In going to the cache he used his own Ford Touring Car. He recognized the defendant, Jack Kelly, in the Court Room. On the 25th of March, 1930, he didn't make any deliveries, but stayed around Jack Kelly's at Room 302 Ramona Apartments. On the 26th of March, he met Jack Kelly and Victor Scholtz in the Ramona Apartments and he followed Victor Scholtz out to the Lesser Road and got 10 gallons of liquor at the request of Jack Kelly and took it to Room 402 Ramona Apartments. On March 27th, 1930, Jack Kelly, having been arrested the night before, the witness moved his liquor to Room 28 Westcliffe Apartments at Jack Kelly's request. There was approximately 4 or 5 gallons of moonshine. On March 28th, did nothing. On March 29th, he saw Jack Kelly in Room 302 Ramona Apartments with Victor Scholtz, James Hershey and John Doe Horn. Victor Scholtz led him out to the Webster Road and picked up 20 gallons. This was done under the instructions of Jack Kelly and then Vic Scholtz wanted him to take the other 10 gallons to James Hershey and Hahn at 4:30. Of the 20 gallons he got, he took 10 to Jack Kelly and 10 to defendants, Hahn and Hershey. On March 30th, 1930, he did nothing. He was using a Ford automobile up to this time and so used it until April 4th. Then he got a Chevrolet Coupe, so as to go to work for the defendant, Joe Brown. He saw Joe Brown at Kelly's on April 4th, and the witness

asked him for a job and it was given to him. He met Joe Brown on one occasion prior to that time at Jack Kelly's. He don't recall the conversation. On April 4th, Victor Scholtz or Jack Kelly wanted some more liquor and Victor Scholtz led him out on the Webster Road, Multnomah County. They didn't find any liquor there. Vic Scholtz told him it had been stolen. He went to work with Joe Brown on April 5th. On that day he went out to the Webster Road with Victor Scholtz for 50 gallons of liquor, which he said he had hidden there, but it was gone. On that date saw Joe Brown at his house on 61st and Foster Road, Multnomah County, Oregon. While there, Joe Brown called up Hubbard 16F2 and asked for Bill or he said "Hello Bill" and asked him about some stuff. He didn't say who "Bill" was. On that day he drove Joe Brown to Astoria, where Joe Brown was trying to make arrangements to haul him some liquor. They didn't make any delivery that day because they didn't have any. They returned that night and he and Joe Brown went to Wilsonville Ferry in Oregon to leave a load of liquor. They arrived there about midnight. Joe Brown woke up the Ferryman and asked him when Butch was coming across. He don't know who Butch is. The Ferryman told him, Joe Brown, he would be along about 3 or 4 in the morning. They then drove home, but returned at 4 o'clock. They woke up the ferryman, drove on the ferry and when they got on the other side there was a Studebaker Touring Car from which they transferred 30 gallons of liquor into their car. Joe Brown and he transferred it. He don't know who was in the Studebaker. Of the 30 gallons they secured, Joe

Brown told him to deliver 15 to Jack Kelly and 15 to James Hershey and Hahn, which he did. He delivered the 15 to Jack Kelly at Room 28 Westcliffe Apartments, Portland, Oregon. After he made this delivery to Kelly he delivered the other 15 gallons to 430 Yamhill Street, Portland. After each day's work he would write out his notes and meet Mr. Sherly, Field Manager of the Prohibition Department, or Mr. Newell, Prohibition Director. On April 7th, 1930, he did nothing but meet Agent Moon at the Hoyt Hotel under instructions from Mr. Sherly. After April 7th, he didn't work alone but worked with Agent Moon, and that day he saw Joe Brown and Jack Kelly at Kelly's place in the Ramona Apartments. Kelly told Joe Brown that the liquor was pretty bad and to try and get it more uniform and a little bit better, and he gave Joe Brown $30.00 in cash and $30.00 by check in payment for some liquor. On April 8th, Agent Moon and he went to Joe Brown's place on Foster Road and Joe Brown told them to meet Victor Scholtz at Oswego and he led the way over the Wilsonville Road, being Market Road 12, to Oswego. When they got there they picked up 3 10-gallon kegs near a church. Victor Scholtz told them to deliver 10 gallons to Jack Kelly's room, 28 Westcliffe Apartments; the other 2 kegs they delivered to defendants, Hershey and Hahn, at 430 Yamhill street. On April 9th, he stopped at James Hershey's place and Vic Scholtz was there who told him to transfer 8 gallons of bad liquor that was there to Jack Kelly, which he did, taking it to room 102 Ramona Apartments. On April 10th, Agent Moon and he went to Joe Brown's house

and Joe Brown wanted them to take 35 gallons of liquor that he had to Astoria. Prior to that time, he wanted the witness to answer the telephone for a small salary. On that day he had the valves of his Chevrolet ground at the garage of the defendant, Earl Trowbridge, which garage was next door to Joe Brown's house; that night they followed defendant, Joe Brown, out 72nd Street, Portland; waited around the corner and a Studebaker Sedan drove up and they transferred 3 10-gallon kegs to his car. Joe Brown hid 2 10-gallon kegs in the woods. He had not seen this Studebaker before and didn't know who was driving it. The next morning they started for Astoria with 3 10-gallon kegs in his car, to make a delivery. He put the car and its contents in his garage that night. As to how this liquor was transferred, he stated that the Studebaker drove up behind them and Joe was along and handed Agent Moon a 10-gallon keg which was put in witness' car. Then witness put one in his car and then the driver of the Studebaker put one in Joe's car. Joe Brown went in his Ford Touring car while he and Agent Moon went in the Chevrolet Coupe. They followed Joe, and on April 11th, 1930, started for Astoria at 4 o'clock to wake him up. He told them to go to Astoria with the liquor; that he would come later and to hide the liquor 16 or 18 miles this side of Astoria, which they did, arriving there about 10 or 11 o'clock. After they hid the liquor they rode into town and met Joe Brown in the Astoria Hotel. Then Joe Brown brought a man around, being the defendant, John Benakas, to whom he was going to sell the liquor that

he had hid in the woods. Witness rode in Joe Brown's car with Benakas to the cache and Joe Brown told Moon to drive witness' car back to Portland. They went over to the cache. Joe Brown tapped the keg, siphoned off one pint, Benakas tasted it, said it was all right, and that he would take it and pay later. They then took Benakas back to Astoria and Joe Brown and he drove back to Portland. When they got back here, Brown took him to 129 North Fifth Street and made him acquainted with the defendant, James Short. While at Short's place, Joe Brown bought 4 drinks of moonshine from James Short and told Short that witness was his delivery man and to put his telephone number on the door so he could call him whenever he was out of liquor. James Short put the phone number on the door. Brown told Short he was going to start a brewery and would sell him all the beer he wanted for 25c a quart. Short told witness where to deliver the liquor in a kind of hallway next door to 129 N. 5th Street,— to just roll the kegs in there and slam the door. From there they drove to the Overland Hotel at First and Couch Streets, where Joe Brown got out of the car, was gone a while and he told witness that Paul Maras wanted 2 10-gallon kegs to be delivered the next evening; that there would be some men there to accept the liquor when they opened the door of the car. That they then went to Jack Kelly's place and the man in charge there told them he was out of liquor and wanted 10 gallons right away. Thereupon, Agent Moon and he went and met Joe Brown on 72nd and Fifty-fifty Avenue and were told by him where 10 gallons were hid

in the brush, which he told them to deliver to Jack Kelly. Joe Brown was to pay him 50 cents a gallon for hauling liquor on some occasions. On the Astoria trip it was $1.00 a gallon. Jack Kelly paid for his own hauling, paying witness 50 cents a gallon. After Joe Brown had shown them the 10 gallons in the cache Agent Moon put it in the car and drove it to their home. Later that night Joe Brown called him up and told him to meet Victor Scholtz at Bergs Chicken Dinner Sign, a few miles out of Newberg; that Vic. Scholtz would have a load of liquor there for him. That thereupon after Moon and he went out there and met Scholtz and the defendant, Palmer Peterson. Scholtz left his Chrysler car at the Berg's Chicken Dinner Sign and they rode out in Palmer Peterson's Sedan. Peterson being there after liquor. They drove on a side road where Victor Scholtz stopped. He turned off his lights, telling Moon and witness to do the same, and then he gave them 2 10-gallon kegs and one 5-gallon jug, which they put in their car to make deliveries. They put the 25 gallons in their garage and delivered 10 gallons to Jack Kelly at the Glisan Street Garage. This was on the night of April 11th. On April 12th Scholtz told them to deliver some more liquor to Jack Kelly and they delivered one 10-gallon keg to Mill Street Garage and another 10 gallon keg to Johnson Street Garage to Jack Kelly; that on April 12th, at 10 P. M. they went over to the Overland Hotel where they delivered 5 1-gallon jugs at the front entrance. Joe Brown had told them not to stop unless he was there. Otherwise they wouldn't accept the liquor. They drove around the

corner and he saw Joe Brown in the doorway who motioned him to stop, whereupon he stopped, got out of the car, unlocked the back end, took the 5 gallon jugs and handed it to somebody at the doorway. Who it was, he don't know. Before that, they had tried to make the delivery there and the man upstairs wouldn't take it, so they went out to Joe Brown's house and they were told by Brown to never try to make a delivery at the Overland Hotel unless he was in front of the place. On April 13th, Victor Scholtz called him up and told him to be on Market Road No. 12 to get some liquor. He and Moon went there but Scholtz didn't show up. On April 14th, Joe Brown called him up and told him to meet him at the Sellwood Bridge, which he did, and Brown took him out on the Market Road No. 12, Multnomah County, Oregon. When they got there they put 15 gallons of liquor in his car and Joe Brown put 15 gallons in his. He took the liquor in his car to his garage and Moon and he delivered 5 gallons to James Short, being told by Joe Brown that Short wanted some. They saw Victor Scholtz that afternoon at 324 Grand Avenue and Scholtz wanted him to work for him on a percentage of half and half basis, which witness told him he couldn't work for that. Then Scholtz told him he would pay him 25 cents a gallon and pay his fine and expenses on the car and go his bond, and that if he ever got knocked over not to call Joe Brown but to call Walter Tooze or Frank Berry. Scholtz also told him at that time he was buying direct from Joe Brown for $4.00 a gallon; that Joe was going out on the road, hauling from the still to the relay car. In all

of his trips, witness never went to a still. On April 14th, Victor Scholtz told him there was some more liquor out on the Market Road 12 and for him to get it, so he and his wife went out there and picked up 3 10-gallon kegs, which he delivered to Garage D, Glisan Street, Portland, under Victor Scholtz's instructions for Jack Kelly, and likewise under Scholtz's instructions he delivered 1 10-gallon to Hershey and Hahn, 430 Yamhill Street, Portland. That same day or evening Joe Brown called him up and told him to meet Victor Scholtz on Market Road 12, and that there would be more liquor there, but when they got out there Vic didn't show up, so they called Joe Brown and told them to wait at witness' house until Scholtz came down; that then Scholtz did come down to the house and told them to go in their garage and get 10 gallons and deliver it to the Overland Hotel, which they did, delivering a 10-gallon and 2 5-gallon kegs to the Overland Hotel, 1st and Couch Streets, Portland, Oregon. They then followed Vic through Oswego and over the Boones Ferry Road under instructions of Scholtz and they found 1 10-gallon keg and 2 5-gallons in the brush and he told them to deliver 15 gallons to James Short at 129 N. 5th Street, Portland, which they did, hiding the remainder on the road on the way in. On April 15th, Scholtz told them to meet him at the Wilsonville Ferry and get some liquor. They met him there and they got 40 gallons of liquor in their car. A Studebaker touring car drove off the ferry and Victor Scholtz was behind with a Chrysler, 1929 license, No. 102201. On April 16th, Scholtz called them up and

told them to load 30 gallons of liquor in the car and take it out to the Webster Road, which they did, transferring the liquor to George Edwards in a Chevrolet Coupe, bearing an Oregon license, 268164. Then Scholtz told them to deliver 20 gallons of liquor to Jack Kelly, which they did, delivering same to the Glisan Street Garage. Then they saw Victor Scholtz that night and told them to meet him at Wilsonville Ferry in the morning at 3:30. Later that night, Joe Brown called and wanted him to go to the east approach of the Sellwood Bridge; that Moon and he did so and Joe Brown drove up, with a Model A Ford Touring car, 1929 license, 314806, and he drove them over on Market Road 31 about 5 miles out of Oswego in this state and county and he told Moon to drive on in his car while Joe Brown and he hid 50 gallons of liquor so they would know where it was when they called him to deliver it. On April 17th, they went to the Wilsonville Ferry and met Victor Scholtz at 3:45 A. M. They woke up the ferryman; they went down to the ferry and a Hudson Sedan drove off. There were 8 5-gallon kegs in his car and they transferred 5 10-gallons and 2 fives to Victor Scholtz, Chrysler License 102201. Of the liquor that was put in his car they hid 3 10-gallon kegs and they took the 8 fives in his car and put them in his garage. Scholtz told them that a man by the name of Alstott was going to call and that he wanted 20 gallons of liquor. They then went back to Market Road 31, where Joe Brown and he had hid the 50 gallons. They picked up 20 of them and drove on to the upper Boones Ferry road and stopped because Scholtz told them he

was afraid Tom Alstott would high jack it so they hid the 20 of them to the Johnson Street Garage for Jack Kelly. He was told by Joe Brown to call Tom Alstott. Joe Brown saw Jack Kelly. He was told to call At. 7575 and ask for Room 329 Alder Hotel, Portland, which he did and in the course of the conversation arranged to meet him at 6th and College Streets, Portland. He drove up in a Studebaker Commander, California License 1 W 6905 and another man was with him. Tom Alstott came over to the witness and handed him $40.00 and said to take it for 10 gallons of liquor that he wanted. Witness told him "No" that he didn't want to sell him any liquor, when he had the other man with him so he got rid of the other man and he and Moon met Alstott at the West approach of the Sellwood Bridge. Witness drove his Studebaker Commander, leaving Agent Moon in his car, and he drove to 224 Grand Avenue and Alstott paid Scholtz for the liquor. Thereupon they went back to where his car was and Tom Alstott followed him in the Studebaker to the upper Boones Ferry Road where they picked up 10 gallons and put it in his car and the other 10 they put in witness' car. That is the same 20 that had been cached there a day or 2 before. Scholtz had told him to take the other 10 to James Hershey. The place at 224 Grand Avenue is the garage of defendants, Victor Scholtz and Art Hines. On April 18th, 1930, he went to 224 Grand Avenue. Saw Joe Brown and Vic and Moon. He and Art Hines ran an old Chevrolet touring car in the garage and Joe Brown told Moon that he bought that for Moon to haul liquor with. He

saw Mr. Sherley taking to him 5 half pint samples of liquor that they had taken out of the kegs in connection with the deliveries that he was testifying about. On April 19th, 1930, Scholtz told him to deliver 5 gallons to Hahn at 430 Yamhill Street, under instructions from Scholtz over the phone. That delivery was made. Hahn and Hershey had been arrested the night before and Hahn told him that Hershey was still in jail and that he wanted to start all over again.

Q. Now what else did you do on April 19th?

A. We went to 224 Grand Avenue.

Q. Where is that?

A. 224 Grand Avenue, Portland, Oregon.

Q. I know; but what kind of business is that?

A. Garage.

Q. Whose is it?

A. Vic Scholtz and Art Hines. And was talking to Vic and he told me that he—he told Agent Moon and I he was afraid to work for Joe Brown any more, because the Feds were after him so bad, and he was a little leary of getting in for conspiracy.

Q. Now what else did he say there? You said the Feds were after him so bad, who did you mean, after who?

A. After Joe Brown.

Q. What else did he say there?

A. He said that the Feds had got plenty of Joe Brown's fellows and equipments, but had never got him, because he would always let the other man do the handling, and play safe himself.

MR. GOLDSTEIN: I move that that answer be stricken out, as it has nothing to do with the furtherance of any conspiracy; purely a statement that has nothing to do with the object for which these people are indicted. I object to that as incompetent, irrelevant and immaterial.

Court: Objection overruled.

Exception saved. (350-351)

On April 19th, Jack Kelly called him by 'phone stating he wanted 20 gallons of liquor. Witness thereupon called up Vic Scholtz and was told to make the delivery, whereupon they made delivery of 4 5-gallon kegs to Glisan Street Garage, first going to Kelly's residence to get the keys to the garage. On April 20th, Joe Brown told him to call up Tom Alstott, Meredith Apartments, which he did, and was told that he wanted 5 gallons of liquor; that he thereupon called up Joe Brown and told him to be down to the Meredith if he wanted his money; that he and Moon went to the apartments and Tom Alstott and Joe Brown were there. The witness and Moon had 5 gallons of liquor in the car which they left 2 blocks down the street. While they were in the apartments a man came in whom Alstott introduced as Mr. Whitely but who was the defendant, James Mooney. He was introduced as Alstott's partner. Mooney pulled out a bottle of liquor out of one hip pocket and a half pint of liquor out of the other pocket and told Joe Brown to take a drink of it; that it was rotten; that it was his liquor that he had gotten from him before and he and Moon took a drink. Also Mooney took a drink. Then Joe Brown

told them to go down and get the 5 gallons he had left in the car. They brought the 5 gallons upstairs. Joe Brown tapped the keg, siphoned off a pint and they tasted it to see if it was any good. They got the siphon from his car. James Mooney went and got it. After it was tested Mooney pronounced it a little bit better, and then, he, Mooney, and Joe Brown went out. He asked Brown if he got paid for the liquor and he said "yes"; that he had gotten $20.00. On April 21st, James Short called him up and asked if he could deliver him 20 gallons of liquor. Witness asked Vic Scholtz about delivery and was told to make it when he got the hundred. He went to Vic Scholtz and Art Hines Garage at 224 Grand Avenue to see Vic Scholtz about delivering as they didn't have any liquor. Joe Brown then drove up and he and Vic Scholtz went out to his car and asked about getting more liquor. Joe Brown told them to wait—he would find out. They waited at the garage. Joe Brown then 'phoned in and talked to Victor Scholtz, after which Victor Scholtz told Moon and him to be at Canby that night. They drove out, Vic Scholtz telling them to follow him, stating he was going to one of Joe's farms. They drove to Gus Daskalos farm and picked up 100 gallons of liquor in the 2 cars, Vic Scholtz car and his own. As they turned in at the Daskalos ranch they turned off their lights. When they got along side of the house some one came and drove Victor Scholtz's car off in the dark and they could hear him loading liquor. Then this same man came back, telling him and Moon to get out, took their car and drove it to a barn. They saw the Hudson that

they had seen on the Wilsonville Ferry there and the liquor was along side between the Hudson and barn. They loaded 40 gallons of liquor in his car. Agent Moon and he helped besides 2 other men whom he don't know. After they got the liquor Scholtz told him to meet him at 9th and Umatilla Streets and unload all but 15 gallons out of his car which he did and then he drove up and told them to back his car in. They unloaded 60 gallons out of his car. There were 8 5-gallon and 12 5-gallon kegs in his car, and they unloaded it in the garage. Then Vic Scholtz told them to follow him to James Short's place at 129 Fifth Street, Portland, where, accompanied by Victor Scholtz, they delivered 15 gallons in the side door. Victor Scholtz holding the door open. That was a 20-gallon delivery. On April 22nd, Moon and he went to the garage of Victor Scholtz and Art Hines to grind the valves on his car. In connection with the delivery at James Short's place, James Short had already told him which door it went in. On April 22nd, Vic Scholtz told them to go with him and they went to Jack Kelly's place where Victor Scholtz collected $25.00 from Kelly; then they went to 129 N. 5th Street and Vic collected $100.00 from James Short for the 20 gallons delivered the night before. Then Vic told them to go to 430 Yamhill Street to see if Hahn was still there or whether he was drunk or not; to see about collecting. He wanted to know if he could collect for the 5 gallons he had delivered to Hahn before, but he didn't find the defendant Hahn that evening, but he found out that Hershey had gotten a sentence of 75 days. There was a 10

gallon keg of green liquor, that is, liquor that hadn't been aged, that they had gotten sometime before that and which they took out on the Lesser Road 8 miles out of Portland and hid in the woods to let it age. They picked it up later. They had gotten it at his garage. On April 23rd, Victor Scholtz told them to deliver 20 gallons to Jack Kelly, which they delivered to his Glisan Street Garage. They saw Jack Kelly that night at a rooming house at 106 N. 19th Street, where Agent Moon bought a pint of liquor from him for $1.00. They reported again to Mr. Shirley. Then they went to 224 Grand Avenue to the garage owned by Victor Scholtz and Art Hines. Scholtz told them that he was afraid Joe Brown was going to fire him because he was $200 short in his money. Then Joe Brown called witness up at 224 Grand Avenue and was told to come to his house right away. Moon and he went there that evening, where they found Joe Brown and his wife eating supper with 2 other men. Joe Brown gave them a couple of drinks out of a bottle; then he wanted witness to work for him to buy liquor from him for $3.50 a gallon and to sell it for whatever price he could get out of it. Witness told Joe Brown he didn't went to do that, so then Joe Brown told him he would pay him straight 50 cents a gallon for hauling liquor for him and to take Victor Scholtz's place as he was letting him out. Brown also told him that one of the men that was there was taking over the territory at Tillamook and he wanted witness to deliver this man 35 gallons of liquor and to drive over to Virginia Market on Macadam Road, Fulton, South Portland that evening. In the course of his con-

versation with Joe Brown, Brown wanted to take over witness' car and let the man whom he later found out was Thomas and who was going to Tillamook have witness' car, which was a Chevrolet Coupe. They loaded 7 5-gallon kegs in the rear and they met Joe Brown and Thomas out in the Virginia Market, where witness got out of the car, handed the man a $20.00 bill and Joe Brown drove Moon and him; Thomas drove witness' car over the Boones Ferry Road. He never got his car back, but was paid for his equity by Joe Brown. On April 24th, Joe Brown came over to his house, drove him and his wife and baby to town and they went to the A. B. Smith Motor Company, where he bought a Ford Coupe, 1929 license, No. 264367, Joe Brown paying the down payment. Joe Brown wanted him to get some kind of a car that had lots of room in the back to haul liquor. He picked out a 1926 Ford Roadster because he said it would haul 60 gallons, but witness took the Ford Roadster out for a drive and the rear end was on the bum so he took it in and traded it for the coupe. On April 25th he went to Joe Brown's place on Foster Road, where he told him to load 45 gallons in his car and take it to Clatskanine up to the LaJesse Road. Agent Moon and he loaded up 30 gallons of liquor out of his garage and they started for the LaJesse Road from Portland. Upon arrival, they waited for Joe Brown. LaJesse Road is on the Astoria highway beyond the 67 mile post from Portland. Joe Brown drove up and told them to follow him, which they did for about ½ of a mile or ¾ of a mile on the LaJesse Road. They stopped at a house there and Joe Brown

told them to unload some liquor, but leave a 10-gallon keg in the car. They saw Wilford LaJesse, a stranger, Wilford LaJesse's wife, and Joe Brown and his wife. The stranger took the liquor that was unloaded there. They went into the house and saw LaJesse counting out money on the table and Joe Brown picking it up and counting it and Mrs. LaJesse served drinks to them and Joe Brown told him to follow Wilford LaJesse to Westport, witness having been previously told to leave the other 10 gallons in the car. They thereupon followed Wilford LaJesse who was in the pilot car to Westport and was told to place same in a closet in a house next to Barahan's store. LaJesse was driving a Durant Sport Coupe. When they got to Westport, LaJesse got out of his car and went into the store, and when he came out he motioned to him to bring the liquor in, and then after leaving the Barahan's they drove back to Portland.

The next day, Joe Brown told him to deliver some liquor to Kelly, and that evening he delivered 2 5-gallon kegs at Garage D on Glisan Street. These kegs were gotten out of his garage. He got in touch with Joe Brown over the 'phone and Brown told him he would have some more whiskey for him the next day. On April 28th, 1930, Joe Brown called him up and told him to be at the east end of the Sellwood Bridge out of South Portland, where he fixed him up and took him to 12th and Alder Streets, Portland, where they waited and saw Victor Scholtz in a Chrysler car. 102201, drive across the street and park. He told witness to drive the car out in the woods and hide the 70 gallons

of liquor on the Lesser Road. Joe Brown told him to take the car after it was unloaded to the Peerless Garage, which Agent Moon did. Later that day, they went out on the same road and under instructions from Joe Brown, got 10 gallons of liquor and delivered it to Jack Kelly at the Johnson Street Garage, Portland. Later that day Brown told him to load the car with liquor and take it to Astoria. They loaded 40 gallons and hid it in the woods about 10 miles this side of Astoria. They got there about 10 or 11 o'clock at night and Joe Brown told him to go to the Elliott Hotel and ask for Jack Kelly; that he, Joe Brown, would register there as Jack Kelly. They went there and waited until Brown showed up and he took them to the Douglas Hotel and paid for a room and told them that they were going to make a delivery of liquor the next morning. The next morning Joe Brown woke them up and told them to get 10 gallons and leave it in the rear of the Webster Hotel. They went and got the liquor and left it in the garage and in the meantime somebody else unloaded the car. Then Joe Brown told them he was going out to meet a load of 50 gallons on the road coming over from Longview on the bridge, and they met that car. Joe Brown was driving an Oakland Coupe, Washington License 279632, and behind him was an Oldsmobile Coupe, Washington License, 264353. The Oldsmobile car had the liquor. They met these cars at the 80 mile post. When they met these cars Brown waived to them to follow him so they got behind the Oldsmobile and followed to the 90 mile post and transferred 40 of the 50 gallons of the Oldsmobile into his

car. Brown told him that they were going to deliver 10 to Peter Aperges at the Astoria Shoe Shining Parlor; that they thereupon hid 30 gallons in the woods and delivered 10 gallons to Pete Aperges. When they got to Pete Aperges' place, Joe Brown bought drinks from Pete Aperges for Moon and witness and he gave Aperges witness' telephone number and told him to call witness up in case he wanted liquor. Aperges paid Brown $60.00. They thereupon drove back to Portland. The next day, April 30th, 1930, Joe Brown told them to make a delivery of 10 gallons of liquor to Jack Kelly, which they did at the Johnson Street Garage. That day Brown called him up to meet him at 13th and Salmon Streets, Portland, and he drove him over to the Lesser Road, and showed him where 70 gallons of liquor was cached. That night Moon and he drove over there, got 20 gallons of this, and delivered it to Paul Maras at the Overland Hotel, 1st and Couch Streets, Portland. They first drove down and left their car in the Oasis Stage Depot, 3rd and Ankeny and walked over to 3rd and Couch Streets, where they were waiting for Joe Brown because they had to have him see delivery was made. They waited for about 15 minutes and then he called up Joe Brown who told them he would be right down; that he didn't have his car. A little later they saw defendant, Walter Tooze, drive up in his car with Joe Brown. They got out of their car at 3rd and Couch at the Melltis Bros. Grocery. They went into the grocery. Joe Brown came out, walked across the street to us and told us he would make delivery right away. Then he went up to the Annex Hotel and told

them to make delivery to the side entrance of the Overland Hotel; that there would be someone there to accept it. They drove around the block and when a man tapped his foot, he being Paul Maras, they stopped. He carried 10 gallons and Paul Maras carried 10 gallons upstairs in the side entrance. Joe Brown at the time of the delivery was almost to 2nd and Couch and Tooze was between 2nd and 3rd about ½ way in the block. Later that night, about midnight, they went and picked up 40 more of the 70 gallons which Joe Brown had showed him out on the road and they put it in witness' garage. On May 1st, they were to deliver some liquor to Jack Kelly, but Joe Brown told him that Kelly owed them too much money and he would not give him any more until he paid what he owed him. In a conversation with Jack Kelly that day, Jack Kelly told him he could get better stuff than Joe Brown was giving him for $3.50 a gallon, delivered to his door. Witness told him to go ahead and do it. Moon and he went to the garage of Vic Scholtz and Art Hines at 224 Grand Ave. and saw Vic Scholtz talking with Hahn, James Hershey's old partner. Hahn wanted some liquor and Vic told him to go ahead and deliver 5; they had financed Hahn for the 5. Witness told him he didn't have any 5-gallon keg. Vic told him to meet him that night and he would show him where he could get some 5-gallon kegs. He told him to go to 50th Street, S. E., near Division and get 2 empty 5-gallon kegs, which he did, took them to the garage, siphoned off 5 from the 10 and delivered it to Hahn at 192-13th Street, Portland. Agent Moon went with him.

On May 2nd, 1930, Jack Kelly called him up and wanted some liquor, whereupon he called up Joe Brown who told him to go ahead and give it to him. He and Moon delivered 10 gallons to the Johnson Street Garage in Portland, getting the keys from someone at Jack Kelly's at 106 N. 22nd Street, Portland; he got 3 keys, one of which was used to open up the Johnson Street garage. After he left Kelly's place he saw Tom Alstott at Room 301 Meredith Apartments. He wanted 30 gallons of liquor but he never delivered it because he was to call later and he never called. He told them to bring him a sample of liquor they had in the garage and Moon and he brought him a sample. Alstott asked if it was going to be good or always going to be uniform and they told him they were not selling liquor, but were just delivering it and they did not know whether it would be uniform, whether it would be green, or aged. Alstott told them that he had a lot of customers that he was going to deliver to, including several hotels in town here. Hahn called him up and wanted some more liquor and witness called Victor Scholtz and asked him about it and Vic told him to go over and see if Hahn was drunk; that he was to let him know and if he was not, he could then deliver him some liquor. On May 3rd, Moon and he delivered 20 gallons of liquor to Kelly at the Mill Street Garage, Portland. That day Moon and he also delivered 2 gallons of liquor to James Short at 129 N. 5th Street. Short told them he was knocked over the night before by the vice squad, and that the vice squad told him that the Federals told him to, and that they went right to the cache without

asking him. That night, Victor Scholtz called and wanted them to deliver 10 gallons of liquor to Hahn at 192-13th Street. He called Joe Brown who told them to give 3 gallons that was left in the garage out of the big keg; that he thereupon delivered 3 gallons to 192-13th Street. On May 4th, he did nothing. On May 5th, Jack Kelly called him up and told him he wanted 10 gallons delivered that night. He called Joe Brown who told him to make the delivery. Jack Kelly told them to deliver it at 106 N. 22nd Street and to bring it in 5-gallon kegs. Moon and he got there at 8 o'clock that night with 2 5-gallon kegs and when they arrived they found that the place had been raided by the vice squad and Moon and he were arrested and they were taken to the Police Station. About an hour later they got out. After that, Moon and he and the other Prohibition officers investigated. They went out on the Lesser Road and picked up the green 10-gallon keg which they had hid to age, and it was brought to the Custom House and turned over to Dan Kerfott.

A. Went to Cathlamet and investigated Wilford LaJesse, who was arrested over there with 10 gallons of liquor.

MR. GOLDSTEIN: Objected to as incompetent, irrelevant and immaterial and I move it be stricken out as having nothing to do with this case.

MR. ERSKINE: Mr. LaJesse is one of the defendants.

MR. GOLDSTEIN: That may be, but it is in Cathlamet County, Washington, not mentioned in the indictment.

COURT: Is Cathlamet mentioned in the indictment?

MR. ERSKINE: No, I don't think it is.

COURT: I will sustain the objection. You enumerate the counties, don't you?

MR. ERSKINE: "And other counties to the Grand Jury unknown." I think that is in there, I won't be sure.

MR. GOLDSTEIN: It specifically specifies three counties, in the State of Washington, King, Mason and Yakima.

COURT: Yes. It will be limited to those three counties.

MR. GOLDSTEIN: I ask the jury be instructed to disregard that.

COURT: Yes, the jury will disregard that in regard to Cathlamet. It is not one of the counties charged in the indictment. (379-380)

He continued to work for the Prohibition Department after he was arrested on May 5th, until June 23rd. In his work he was employed out of Mr. Newell through Mr. Shirley.

MR. GOLDSTEIN: Before cross examination starts I at this time on behalf of Joe Brown and other defendants similarly situated move that the testimony of this witness be stricken out and the jury instructed to disregard it on the ground it is incompetent, irrelevant and immaterial and outside of the scope of the conspiracy charged in the indictment and at variance thereto in that it

relates to separate, isolated transactions, not connected with the specific conspiracy; and for the further reason that there has been no evidence introduced tending to show the existence of any conspiracy as charged, between the defendant Joe Brown and the defendants so situated and the parties affected by the testimony of this witness and that therefore the conduct and acts of the parties mentioned by this witness, not in the presence of the other defendants, and not in pursuance to the specific conspiracy charged are in no wise binding upon the defendants now on trial nor has the witness' testimony any relation to the specific charge mentioned in the conspiracy charge in the indictment.

COURT: Motion denied.

MR. GOLDSTEIN: Exception. (381-382)

Being cross examined by Mr. Robison he testified that his true name was Albert Ferguson; that he had used the name of Grant for about 3 years; that when he was 26 years of age he was confined in the County Jail at Albuquerque, New Mexico, having been convicted of a crime. That he changed his name to Ferguson because he had been in jail. He was in jail about 3 months; that thereafter he was married and married under the name of Jack Grant; that from the Spring of 1929 he drove a taxi cab, working for the Yellow Cab Company, the Red Top and the Union. He met Jack Kelly after July, 1929, while Kelly was working at the switch board at the Union Cab Company. He quit the taxi cab business in February, 1930. He worked

for Jack Kelly from March until May, 1930, being at that time a Government under-cover agent. He was employed by the Prohibition Department at a salary of $5.00 per day. He had been a government under-cover agent before.

At the time he worked for Jack Kelly, Jack Kelly was a known liquor dealer. Between March and May, 1930, the witness had liquor cached in his own garage. Jack Kelly paid him money at several different places; that he did not make a dime out of it himself, except his salary, as an under-cover agent, but that he collected the money from Jack Kelly to cover expenses on the 3 cars that he worked with. He was being paid by the government $5.00 a day and paid by Brown 50 cents a gallon for delivery. The money that he received from Brown he paid the expense for operating the automobile and turned the remainder into the prosecutor's office. That he made a report of all the money he received and how much had been used for expenses on the car. When he delivered over the 'phone orders, that came to him over his telephone number, he receiving calls for liquor on that 'phone and made deliveries from his own garage. He informed Mr. Newell and Shirley that he had stored whiskey in his own garage; that on May 5th, the night of his arrest, he went to the place at 106 N. 22nd Street and met one Bill White and the first thing he told Bill White was he wanted to buy his radio.

Q. Did you want to buy his radio?

A. No. (405)

When he got there besides Bill White the vice squad was there. One of the vice squad started to search him and took a quart, taken from the 10-gallon keg that was in his car, from his overcoat pocket. Found the key to the back end of his car and asked him where his car was, which he told them. After his arrest, Bill White, Moon, and himself were taken to the police station. The liquor that was to be delivered there was to go to Jack Kelly.

Upon cross examination by Mr. Goldstein, he testified that he didn't know why, when he was called as a witness, he gave his name as "Grant." He testified that he notified the Prohibition Department that his true name was Ferguson, and that he had been convicted of a crime; that he so notified them when he was employed; that it was left to his judgment as to the liquor to be drunk by him and how much and what quantity, and that the Government furnished the money to buy the liquor; that he did buy some liquor, and that he did drink a little; that at the time he was in Tom Alstott's apartment he had 2 very small drinks; that it didn't intoxicate him; that he also drank liquor on an other occasion, to-wit: that he had one drink of liquor in Astoria; that he was not bootlegging at the time he secured a contract with the Government; that he had been working for some of these defendants 2 days before he spoke to anyone connected with the Prohibition Department; that he had delivered 2 10-gallon kegs to Jack Kelly for Victor Scholtz; that he was bootlegging 2 days before he came in contact with the Prohibition Department; that he knew he was

violating the law at that time; that he did not tell Mr. Newell or Mr. Cahoon or Mr. Shirley that he was bootlegging. For 2 days he had been working for Victor Scholtz delivering liquor at 50 cents a gallon; that the last work he did for the Government as under-cover man was March 1st, 1931, where he had been employed for 15 days. Outside of that, his business had been selling burglar alarms, picking blackberries, and raspberries in Sumner, Washington, and picking cherries and beans at Milton, Oregon; that at the present time he was doing nothing. On April 20th, with respect to the Tom Alstott incident, he was the one to make the arrangement with Tom Alstott over the 'phone; that, however, he called Joe Brown and told him about it and he thereupon delivered 5 gallons which was in his garage; that he sometimes had as much as 100 gallons in his garage and had full control over it; at other times he had no whiskey therein and that he used his own 'phone as the medium for placing orders; that, however, he would make no deliveries without consulting somebody but there were times when people would call him up for liquor and he would make deliveries himself; that sometimes he would pocket the money himself, most of which was used in the operation of the cars; that on some occasions he pocketed the money that he secured from the sale of liquor, but that it was owing to him by Joe Brown for back hauling of whiskey, and that he took the money on account; that this money was paid him for his services in participating in the sale of liquor; that with respect to the Alstott incident on April 20th, after calling up Joe Brown, he delivered 5

gallons to Alstott's apartment; that he got $2.50 for the hauling for Joe Brown, which money he used in the operation of the cars. At first he went to work for Jack Kelly, selling liquor and then he went to work for Joe Brown delivering liquor; that he sought out Joe Brown himself and told him he wanted a job; that he really didn't want it, but he wanted Joe Brown to believe he did; that he was with Moon on occasions when Moon bought supplies from Joe Brown at the Joe Brown Supply Store, Portland. The supplies being corks for kegs. He first worked for Kelly and then quit his job and then worked for Brown and then worked for Victor Scholtz, and he worked for nobody else, other than for the Government. Tom Alstott was a retailer, and that Joe Brown fixed the price of the liquor sold to Alstott; that Alstott had nothing to do with the transportation of the liquor to the different caches, other than he brought one 10-gallon in from some cache into town, though he was not with him. He never had any dealings with Anderson, Keene, Gilliland, Rudolph Bouthellier, Paul Richardson, Zielenski, Moffett, Aperges, Wolf, or Trowbridge; that in all of his dealings, which consisted of making deliveries of liquor for Kelly or for Brown or for Scholtz and parties, he came in contact with so far as he knew them he had no relationship and had nothing to do with these defendants just named; that he was actively on the job from March 24th to May 5th; that his house was made the medium for delivery calls and his garage was used as a principal place of storage; that the money he actually received and pocketed from the sale of liquor direct

to the retailer and consumer was about $52.00, which was for a delivery of 12 gallons to James Short; that the reason he pocketed it was because Joe Brown owed it to him for hauling; that he made a report to the Government as to how much money he actually received; that he used 3 cars, a Ford touring car, a Chevrolet Coupe, and a Ford Coupe. He only had one car at a time; that, together, he handled about 500 gallons for Kelly, Brown, and Scholtz, which at 50 cents a gallon would entitle him to $250.00, but that he did not receive that much, and in addition to that he delivered on his own accord enough liquor as to receive $52.00, which was credited on his hauling account, but that he did not sell any and that he didn't remember how much he turned over to the Government.

Upon cross examination by Mr. Long, he testified that he first became acquainted with James Short through Joe Brown; that he had been working for Joe Brown or Kelly about a week or so before that; that on April 11th, Short ordered 20 gallons which was delivered by Moon and him; that at one time he paid Victor Scholtz $100.00 for 20 gallons of liquor; that Victor Scholtz was an employe of Brown; that witness delivered all the liquor, and that Victor Scholtz did all the collecting. The price to Short was $5.00 a gallon; that Short didn't work for any of these men; that all he knows from his own knowledge is that Short purchased some whiskey on 3 or 4 occasions from Brown, for which he paid $5.00 a gallon; that on one occasion, witness delivered Short 10 or 12 gallons, for which Short paid him $52.00 direct; that the liquor he de-

livered to Short he one time got at the Daskalos ranch and another time at his garage; that with respect to LaJesse he met him at the time that he, Moon, Joe Brown went to the LaJesse place at Clatskanine with 20 or 30 gallons of whiskey which they put in an outbuilding on the LaJesse ranch; that he saw LaJesse counting out money to Joe Brown; that he never met LaJesse before, and that he never met him again until the day of the trial, and that one incident was the only dealing that was ever had with LaJesse.

Upon cross examination by Mr. Ryan, he read his report of April 21st, 1930.

A. "James Short or Neff—I was introduced to James Short as Neff—of 129 North Fifth Street called me over the telephone at 10 A. M. for 20 gallons of liquor. After going to 224 Grand Avenue in the A. M. we visited Mr. Shirley. That day about 3 P. M. we again went to 224 Grand Avenue; at 5:15 Joe drove up in his Ford touring Model A and drove along and I went out to talk to him about getting more liquor. Joe said he would call me up in a short time and at about 6 P. M. Joe called Victor Scholtz. Then Vic told Moon and I to be at Canby at these cross-roads at 9:30 sharp. At 8 P. M. Moon and I left home for Canby. We waited forty minutes and Vic drove up; I followed him east on this cross-road about half a mile. He pulled up alongside the road; I stopped also. He told me to turn out my lights when he turned in to a side road about a mile off the main road. We crossed the river. And went

about a mile and a half and followed Vic on the first road to the left about a mile and turned left on a private road. At this point there is a road directly to the right; about a quarter of a mile on this road we stopped at a house and there was a Greek fellow in the road with a flashlight. When we were coming down this road there was a flashlight in front of us and a little to the right and also one directly in front of Vic's car on a little rise; altogether there was three men that we saw in action. The spokesman we might say was probably a Greek. He spoke to Vic as if he thought we were late and he had unloaded the stuff at the barn. He drove Vic's car straight past the house to a point about 25 to 30 yards from the house at the barn. Moon and I was told not to move our car. We stayed in our car for ten minutes; a man came out of the house with a flashlight. He went south from the house about 30 yards and it seemed as though he just disappeared. In a few minutes he reappeared and came to the house. They drove Vic's car back near the house and the Greek spokesman drove our car to the barn, and they loaded us down with seven 5-gallon kegs in the rear and one five in front, and we made arrangements with Vic to meet us at Eighth and Umatilla so he could store that load in my garage. We got to our garage about eleven P. M. and unloaded four 5-gallon kegs in my garage and run my car in the street and Vic drove up and I drove his car in the garage

and unloaded twelve 5-gallon kegs from his car. Then we delivered the 20 gallons to 129 North Fifth Street. Vic was there to open the door for us. This Hudson sedan of the former load at the ferry was at the barn. I think we are in pretty strong with this gang and also we have reason to believe that this is a place where a still is located, but I don't know and I am sure we will make another trip there in the near future, and I think our next trip will bring some very good results provided the place doesn't get hot."

Upon cross examination by Mr. Critchlow, he testified that during the time that he was engaged in hauling this liquor, he bought a car and that he made a payment on that car, and that payment came out of the $302.00 that he testified to was used in the expense of up-keep.

Upon re-direct examination, he testified that the car was purchased to haul liquor and was purchased from A. B. Smith Motor Car Company at Joe Brown's request; that during this time between March 24th, 1930 and May 5th, 1930, he already had a Ford Touring car and he bought a Chevrolet Coupe and they were used to haul liquor in; that the Ford Touring was wrecked and he just made 2 payments on the Chevrolet Coupe; that with respect to defendant's Exhibit A-1, the item on March 24th of 10 gallons to Jack Kelly for $5.00 was for hauling liquor, and the rest of the reports represent the same thing, and being money that he was to receive for the delivery of liquor; that the item on April 23rd of $20.00 from Joe Brown was

for the down payment of his Chevrolet Coupe.

Q. Now, for each of these items, the right hand figure on this defendants' Exhibit A-1, these right hand figures that total $310 of that amount how much did you actually receive, do you know?

A. I don't know just exactly how much I did receive, actually receive.

Q. Did you receive more than that?

A. No, I received much less.

Q. And these figures then on the right hand side totaling $310 represent the amount of money you should have received for the deliveries of liquor to the parties just as listed in that exhibit?

A. Yes. (450)

Upon re-cross examination by Mr. Goldstein, he testified that his acquaintance with Trowbridge has nothing to do with this case so far as he knew; that the $52.00 item that he received from Mr. Short, and which he pocketed, was included in defendant's Exhibit A-1; that when asked to show that item in the report, he stated it wasn't put in there; that some of it, however, was there, but he cannot pick it out; that the car that he purchased from A. B. Smith and payment for which was included in the statement, is the car he claims as his own, and that car he still has and is in his possession; that he had a car when he started out and a car when he finished and he hadn't been fully paid for the hauling anyway.

DAN KERFOOT, a witness called by the Government testified that he was a Federal Prohibition Officer and charged with custodian of evidence. He identified

Government's Exhibits 1-A to 29 as being bottles of moonshine received from Mr. Shirley on May 20th, 1930, since which time they were submitted to Mr. Wells, State Chemist, for test and returned to him and he has had them in his possession ever since and they have always been in the same condition.

L. O. SHIRLEY, a witness called by the Government, testified he was a Federal Prohibition Agent and so employed between March and May, 1930; that he first met Grant in the Summer of 1929, when he was employed by the Government as special employee for a short time; that on March 24th, 1930, he was again employed as under-cover agent on a contract of $5.00 a day, the first contract being for 7 days, the second for 10 days, and then 2 30-day contracts; that during the period of time between March 24th, 1930, and May 5th, 1930, he would see Grant at his room in the Imperial Hotel, Portland, every day or two; the purpose being to keep in contact with him and see the progress he was making and the work he was supposed to do. He started in delivering liquor for Jack Kelly. He received Government's Exhibit 1-A and 2 sometime in April, 1930, from Moon and Grant and he turned them over to Kerfoot; that he received all of the 29 Exhibits under the same circumstances on different dates in his room at the Imperial Hotel and turned them over to Mr. Kerfoot; that he first saw Exhibits 3 and 4 April 11th, 1930, when he received them from Moon and Grant, and that he turned them over to Kerfoot on May 20th, 1930; they being in the same condition as when he received them; that he first saw Ex-

hibit 5 on April 11th and 6 and 7 on April 30th, when he received them from Grant and Moon and he turned them over to Kerfoot on May 20th, and the contents were in the same condition as he had received them; that he saw Exhibits 8, 9 and 10 on April 18 and Exhibit 11 on April 21st, 1930, when he received them from Moon and Grant and turned them over to Kerfoot on May 20th, and that they were in the same condition as when he received them; that he saw Exhibits 12, 13 and 14 on April 21st and 15 on April 23rd; that he received them from Grant and Moon in his room in the Imperial Hotel and he turned them over to Kerfoot on May 20th, and that the contents were in the same condition as when he received them; that he received Exhibit 16 on April 23rd and Exhibits 17 and 18 and 19 on April 25th from Moon and Grant and that he delivered them to Kerfoot and they were in the same condition as when he received them; that he received Exhibit 20 on April 26th and Exhibits 21, 22 and 23 on May 1st from Moon and Grant, and he turned them over to Kerfoot on May 20th, 1930, and the contents were the same; that he saw Exhibits 24 and 25 on May 1st, and 26 on May 5th, when he received them from Moon and Grant, and he turned them over to Kerfoot on May 20th; that he saw Exhibits 27, 28 and 29 on May 8th when he received them from Moon and Grant and he turned them over to Kerfoot on May 20th, and the contents were the same.

Upon cross examination by Mr. Goldstein, stated that he never knew Grant by his true name of Ferguson; that he told him his name was Grant when he em-

ployed him and he believed him when he told him that; that he employed him in 1929 for 30 days and he employed him again in 1930 to buy liquor; that he sometimes provided him with money with which to buy liquor, and that he anticipated that he would spend that money for the purchase of liquor; that at the time he employed him he didn't know that he had been convicted of a crime and didn't find it out until after the termination of his business relations; that at the time he employed him they didn't know he was actually engaged in bootlegging, that is selling liquor for others, nor did he tell him that he was. One of the exhibits of liquor is a bottle that was purchased with Government money. He don't remember whether he gave it to Grant or to Moon. Grant never turned any money over to him or the department; that his contract was renewed after 7 days because he got results and upon his ability to get results depended his continuance and employment.

MR. MOON, a witness called by the Government, testified he has been employed by the Government since February 28th, 1930, as Prohibition Agent; that he first met Grant or Ferguson on April 7th, 1930, at the Hoyt Hotel where Mr. Shirley brought him up and introduced him; that it was arranged that he should live at Grant's house, which he did. On April 7th, they went out to 6155 Foster Road, Portland, to get some empty jugs. They came back without any, because they found no one at home; that on April 8th, he and Grant went to Mickey's at 6153 Foster Road and there they met defendant, Joe Brown. He didn't over-

hear the conversation between Grant and Brown, but he and Grant then went to Oswego. Vic Scholz came to their car and he heard Vic ask Grant if he had plenty of gasoline. Vic then got in his car with the remark to Grant to follow him. They went out on Market Road 12, where Scholz stopped his car and showed them where there was some liquor cached on the side of the road. Scholz was driving a Chrysler Coupe, Oregon License 102201. They picked up one keg there and then they picked up 2 more kegs and came to Portland. They delivered one 10-gallon keg to Jack Kelly. The other 2 10-gallons were delivered to Hershey and Hahn; that Grant carried the keg up to Kelly's apartment, 28 Westcliffe Apartments, Portland; that Government's Exhibit 1-A contains sample taken from the 10-gallon keg that was delivered to Jack Kelly on April 8th. The bottle was labeled and taken to Shirley's room at the Imperial Hotel; that the contents were the same from the time he siphoned it from the keg and delivered it to Shirley. Government's Exhibit 2 contains a sample taken from the liquor delivered to Hahn and Hershey on April 8th, and which bottle was delivered to Mr. Shirley and the contents were the same from the time he siphoned it off to the time when he delivered it to Mr. Shirley; that on April 9th, they went to Mickey's garage on Foster Road, and then went out to Market Road 12 and picked up a 10-gallon keg which they brought back to Portland and delivered it to Mr. Kelly. On April 10th they went out to Mickey's garage on Foster Road and met Joe Brown and after Joe Brown and Grant had talked for a little while Brown told

Grant to stay there until he came back; that he had a job for him later. They waited until he came back about 7 o'clock. Brown drove a Chevrolet Truck, 1930, Oregon License No. 96260 in front of the house and left it standing there. Grant came out of the house and told witness they were directed to go to the end of 72nd Street. After they got there Brown came up in a Ford Touring car, 1930 Oregon License No. 231188. He told them there was a load coming and that he wanted them to take a portion of it in their car. The load came up in a Studebaker Sedan, Oregon License 120100. Thee 10-gallon kegs were transferred to Grant's car and the other 2 were put in Joe Brown's car. The witness went to Grant's home and drove his car into a garage and left it until morning. Joe told Grant that Grant and he were to take that 30 gallons to Astoria, the next morning. The next morning on April 11th, 1930, they went and woke up Joe Brown at his residence and were directed by him to go to Astoria and described a road where they were to cache the liquor. Government's Exhibit 3 is a sample of moonshine drawn from a keg that was cached near Astoria. The bottle was labeled and delivered to Shirley, being in the same condition as it was siphoned off. When they got near Astoria they drove off the road and hid the 3 kegs; that they then went to Astoria and waited for Joe Brown and they met him there driving a Ford Touring car, Oregon License 314806 for 1930. It was there arranged that Grant should take a certain man out that Joe called "George" and to take him out to the cache where he was to sample the liquor; that Joe would take

this man back to Astoria and he and Grant would return to Portland. They started out as arranged, but when they got a short distance from Astoria, Joe got in the car with Grant and the stranger and instructed the witness to drive on to Portland; that he would bring Grant into Portland; that after they came to Portland, they went to the place at the end of 72nd Street where Joe Brown had cached the 2 10-gallon kegs on the previous day and picked up one of them which they delivered to Kelly at his garage on Johnson Street. Later, they were told to meet Vic Scholz near Berg's chicken dinner resort, which they did, meeting Scholz and a man that he called Pete; that they received 2 10-gallon kegs and 5 glass jugs of moonshine from Vic Scholtz that had been cached along the side of the road there. Vic Scholz came out in a Chrysler Coupe. Then 10 gallons of this liquor was delivered to Jack Kelly's garage on Glisan Street. Government's Exhibit 4 contains a sample of liquor siphoned from the 10-gallon keg that was delivered to Kelly on April 11th, 1930. The bottle was labeled and delivered to Shirley and in the same condition as when he siphoned it off. They took samples from the one-gallon jugs and Government's Exhibit 5 contains the sample which was delivered to Shirley. The contents being the same. One 10-gallon keg was delivered to the Mill Street Garage, the keys therefor having been received from Kelly. They took the 5-gallon jugs to Paul Maras at the Overland Hotel and were given to someone standing in the doorway; they didn't make delivery when they first went there; that thereupon they returned to Joe Brown's

house and Joe Brown said he would have to come down and identify them as the parties who should make delivery. They then went down to the Overland Hotel, saw Joe Brown in the doorway of the hotel and Grant stopped the car, took out the liquor and gave it to one of the men in the doorway; that on April 12th, they had been to the Overland Hotel, but had failed to make delivery, and that he and Grant then went out to Joe Brown's place on the Foster Road and Brown stated that he would have to go with them and it was arranged that he would meet them at 11 or 11:30 P. M.; that if he was standing in the door they should stop and make delivery; if not, they should go by; that when they drove up there Joe Brown was standing in the door. They stopped, witness got out and took one 10-gallon keg and handed it to someone standing in the doorway with Joe Brown. Grant took a 5-gallon keg out of the car and took it upstairs and witness took the remaining 5 gallons and followed upstairs; that instead of delivering 20 gallons as stated, they only delivered 5 1-gallon jugs; that on Sunday, April 13th, 1930, by arrangement made between Grant and Vic Scholz, they went out on Market Road 12, which is near Oswego, Oregon, but Vic Scholz didn't show up, so they returned to town. On April 14th, 1930, Grant and he went to 224 Grand Avenue to the garage run by Vic Scholtz and Art Hines. Grant and Vic had an extended conversation, in which witness later joined, and in the course of which, Vic wanted Grant to take a percentage of the profit over $4.00 a gallon and split the balance with Vic 50-50. This, Grant demurred to, stating he

would rather take 25 cents a gallon and know what he was getting than to split the profits. This was finally arranged and then the conversation drifted to Grant's protection in case he was arrested. It was arranged that if Grant was arrested that he was either to call Walter Tooze or Frank Berry, the latter being a bond man and not call either Joe Brown or Vic Scholz. Later that day Grant went out in the country and when he came back he had some liquor in the car. They were to deliver 15 gallons of liquor at the Overland Hotel to Paul Maras, and Vic Scholz was to 'phone and tell them where to meet him at the cache. Vic didn't show up so Grant and he hunted and found 2 5-gallon kegs, which they brought back to town, and after picking up another 10-gallon keg at the garage which Grant had rented, they drove to the Overland Hotel and met Vic Scholtz. There were 2 men standing in the doorway. He got out, handed one man a 10-gallon keg, which he took and went upstairs. Grant took a 5-gallon keg and witness followed with the third. Government's Exhibit 6 contains a sample of liquor taken from one of the 3 5-gallon kegs delivered to Paul Maras on April 13th, 1930, at the Overland Hotel. After it was siphoned off the keg, the bottle was labeled and delivered to Shirley and the contents were the same when he delivered it as when it was siphoned off. After the delivery at the Overland Hotel, Vic asked Grant if he knew where the Boone Ferry Road was and was told to follow him, Vic. They followed him to this road where they picked up a 10 and 2 5-gallon kegs of liquor. Vic Scholz piloted them out there. They were told by Vic

to take the liquor to 129 N. 5th Street, Portland, and deliver it to James Short. Vic stated he woud precede them and have the place unlocked. When they got there, Vic was at the place and had the door unlocked. The liquor was unloaded and rolled into the hall. Government's Exhibit 7 contains a sample taken from the 10-gallon keg delivered to 129 N. 5th Street on April 14th, 1930. After it was siphoned off the bottle was labeled and delivered to Mr. Shirley and the contents were the same then as when they were siphoned out of the keg. On April 15th, 1930, they went out to Wilsonville Ferry where they met Vic Scholz. A car came off the ferry and Vic drove past Grant and him and they found Vic out aways, where they stopped and 40 gallons of liquor were transferred in their car. The liquor was brought to the garage that Grant had. While they were there making the transfer, Grant asked about the 40 gallons they had in their car and Vic said he had 60 gallons in his car that he was going to take to Astoria. Vic told them to take the 40 gallons and put it in the garage and not to deliver any more liquor to Jack Kelly until he got some money out of him. Vic was driving a Chrysler Coupe, Oregon License 102201. On April 16th, 1930, Grant and he drove up to the Ramona Apartments and he saw Vic Scholz there and heard him tell Grant to go to the garage where Grant had the liquor stored, get 30 gallons and met Vic on the Webster Road East of Portland, Oregon; that they had both better go for fear of a high-jacking proposition. When they got there they found Scholz and a man by the name of Willie Edwards waiting for them. Edwards was driving a Chevrolet Coupe,

Oregon License 268164. They made the delivery of the 30 gallons of liquor from Grant's car to Edwards' car and he saw Edwards pay Vic Scholz some paper money. Government's Exhibit 8 contains a sample of liquor taken from one of the 2 10-gallon kegs delivered to Edwards on the Webster Road on April 16th, 1930. After it was siphoned off, the bottle was labeled and delivered to Shirley and the contents are the same as delivered as when siphoned off. They came back to Grant's home and at 11 P. M. Grant received a 'phone call and 10 minutes afterwards they met Joe Brown at the east end of the Sellwood Bridge. Joe took them in his car and took them out on a road about 4 miles east of Oswego and showed them where he had thrown out 5 10-gallon kegs of whiskey. Joe told him to get in the car and in case anyone showed up on the road to keep moving so as not to attract attention where he and Grant hid the liquor. He wanted them to know where it was cached, so that they could find it to fill future orders. On September 17th, 1930, they went to the Wilsonville Ferry at 3:30 A. M. to meet another load of liquor. Vic Scholz met them there, in his Chrysler Coupe, bearing license 102201. They met a Hudson Sedan, 1930 Oregon License 137183, and they thereupon transferred 40 gallons in Grant's car and 60 gallons to Scholz' car. They then drove out on the Tualatin road and cached some of the liquor, bringing a portion of it back to Portland. They cached 5 kegs on the Tualatin Road and the balance they cached in Grant's garage. They later went back and picked up the 5 kegs and cached 2 on a side road that they were to deliver at Joe Brown's orders to

Tom Alstott. They met Tom Alstott at the east end of the Sellwood Bridge and Alstott followed Grant and him to where they had cached the 2 10-gallon kegs. One of them was put in the car driven by Alstott and the other one Grant put in his car. This latter keg they delivered to James Hershey at 430 Yamhill Street. Government's Exhibit 9 contains a sample of liquor taken from the 10-gallon keg delivered to James Hershey at 430 Yamhill Street on April 17th. The bottle contains moonshine whiskey and was delivered to Mr. Shirley, with the contents the same as when it was siphoned out of the keg. That day at about 12 o'clock midnight, Grant and he drove out on Market Road 31, where Grant, and Joe Brown had cached the 5 10-gallon kegs of liquor. They picked up 3 kegs and brought them to Grant's garage. Government's Exhibit 10 contains a sample taken from the 10-gallon keg of liquor that was delivered to Tom Alstott on April 17th on the Boone Ferry Road. It contains moonshine whiskey. After it was siphoned from the keg it was labeled and then delivered to Mr. Shirley in the same condition as when taken from the keg. On April 18th, 1930, they went to 224 Grand Avenue to the garage operated by Scholz and Hines. They saw Joe Brown there. Joe Brown pushed an old Chevrolet touring car in the garage and told Scholz it needed a battery; that he was going to let witness have the car to deliver in. Scholz put the battery in, got the motor started, but found the rear end was gone. That witness don't know what happened to it. On April 19th, 1930, they delivered a 5-gallon keg of liquor to James Hershey at 430 Yamhill Street, Port-

land, Oregon, and Government Exhibit 11 contains a sample taken from that keg. It was labeled and delivered to Mr. Shirley in the same condition as when it was siphoned out of the keg. The delivery instead of being made to Hershey was made to Hahn, his partner. Later that day, they went to Vic Scholz's garage and Vic said that he had to let Hahn have the 5 gallons, to get started again as they already owed Joe Brown about $125.00. Vic Scholz also said that they would have to be very careful about making contact with Joe Brown as the Federals were after him so hot; that if they got Joe they would be apt to get the whole gang for conspiracy. Scholz also said that they were not to deliver any more liquor to Hahn without his permission; that at 5 o'clock that day they delivered 20 gallons to Garage D on Glisan Street, Portland, Oregon, and Government's Exhibit 12 is the sample of liquor siphoned off from that keg; that it was labeled and delivered to Shirley the same as the other samples with the contents the same as when it was siphoned off. On April 20th, Grant and he delivered a 5-gallon keg of whiskey to Tom Alstott in the Meredith Apartments. Joe Brown was there at the time delivery was made and Joe Brown and Alstott opened the keg, siphoned out a sample and discussed its quality, age, etc. Government's Exhibit 12 contains a half pint of the moonshine whiskey siphoned from this keg and that the bottle was labeled and delivered to Mr. Shirley with the contents the same as when it was siphoned from the keg. While they were in the room making the delivery to Alstott James Mooney who was introduced as Mr. Whitely came in and in the conversa-

tion told witness that the car that Alstott had been driving at the time he got the 10 gallons of liquor, the Studebaker Sedan, was his and they were wanting a cheaper car to make deliveries in as he didn't want to take a chance on losing the big new car. Witness and Grant went back to Grant's home and Grant received a telephone call, whereupon they went to Grant's garage, got 2 10-gallon kegs of whiskey, put them in Grant's car and later Vic Scholz drove up and he and Grant drove away; Grant driving his own car and Vic driving the Chrysler Coupe, 102201. Government's Exhibit 14 contains a sample of moonshine taken from one of the 2 10-gallon kegs that was delivered to Vic Scholz on April 20th, 1930. After the sample was taken the bottle was labeled and delivered to Mr. Shirley and the contents was the same as when taken from the keg. On April 21st, 1930, they went to the garage at 224 Grand Avenue in an attempt to get in touch with Joe Brown. That they saw Vic Scholz there and he told them to meet him at Canby, Oregon, which they did. Scholz told them to follow him and when they got to a mile east of Canby they drove into a private lane where a man met them and told them to stay in their car for the time being. The man took Vic's car and drove it to a barn and they could hear them loading something in Vic's car. Then the man came back and got into Grant's car and with both Grant and witness they drove to the barn where there was a Hudson Sedan and between the Hudson Sedan and the barn there were 8 5-gallon kegs which they loaded into their car. It was the same Hudson Sedan that had delivered the liquor to them at the Wil-

sonville Ferry. The man that drove the car for them he had never seen before, but later he found out his name was Daskalos; that the loading was done by Daskalos and another man with the help of Grant and the witness. After the car was loaded with the liquor, they brought it back to Grant's garage, Vic so telling them to do, and to leave 4 5-gallon kegs in the car, and that he would be along, and that they would put the 60 gallons he had in the Chrysler Coupe into the garage where they already had the rest of the liquor stored. They were instructed by him to deliver the 20 gallons to James Short at 129 N. 5th Street, which they did. On April 22nd, Grant and he went to Vic Scholz's garage and the conversation was with respect to the arrest of Hershey and Hahn. No delivery was made that day. On April 23rd, they loaded 4 5-gallon kegs of moonshine into Grant's car and delivered them to Garage D on Glisan Street, Portland, Oregon, getting the keys from the Ramona Apartments. After making the delivery to the garage, Grant and he went into Jack Kelly's apartment and witness bought a pint of liquor off Jack Kelly. Government's Exhibit 15 is a bottle of moonshine siphoned from one of the 4 5-gallon kegs delivered to Garage D on Glisan Street, Portland, on April 23rd. The bottle was labeled and delivered to Mr. Shirley, the contents being the same as when it was siphoned from the keg. It was about 10 minutes after delivery to the garage that he saw Jack Kelly and the only conversation he had with him was concerning the delivery of liquor and he had told them he had taken a year's lease on the apartment which was at 106 N. 22nd Street, Portland. There was

considerable conversation about the 3 garages he had. He had one rented on Mill Street, one on Johnson Street, and one on Glisan Street. Government's Exhibit 16 is the bottle of moonshine that he bought from Jack Kelly on April 23rd at 106 N. 22nd Street, which he had just testified he had bought. After buying it he labeled it and delivered it to Mr. Shirley, with the contents the same as when he had purchased it from Mr. Kelly. Later that day, April 23rd, Jack Grant and he went to 224 Grand Avenue to see Vic Scholz. Then they went to Joe Brown's house on Foster Road, Portland. Joe Brown asked Grant if he still wanted to sell his car. Grant said he did want to sell it. Brown said that one of the men in the house there wanted to buy it to haul liquor in. There was a conversation about the price, Joe saying after the price had been agreed upon that Grant and he should put 40 gallons of liquor in the car and meet Joe Brown and this stranger on the Macadam Road in Portland. After receiving these instructions from Joe Brown, they loaded in 30 gallons and drove to the appointed place where they met Joe Brown and the stranger. The stranger got into the car which had been previously Grant's car, a Chevrolet Coupe, and Joe Brown gave the man some money. Then Joe Brown brought Grant and him back to Grant's home. Government's Exhibit 17 is a bottle of moonshine whiskey taken from one of the 7 5-gallon kegs delivered to this stranger in the Chevrolet Coupe previously owned by Jack Grant, bearing license No. 181384. After the liquor was siphoned off from the keg, the bottle was labeled and delivered to Mr. Shirley on the same con-

dition as when he had siphoned it from the keg. After making the delivery and Joe Brown brought them back to Grant's home, Joe Brown told Grant that Vic was short in his accounts, that his services were unsatisfactory, and that he wanted Grant to take over the job that Vic Scholz had previously been handling. He told Grant he would allow him all that he would get over the price that Grant was to pay Scholz, saying that at present prices Grant could make at least 50c a gallon, and that he could get more for the liquor than Joe was getting. That at the lowest price that he was getting, Grant could make 50c a gallon, the liquor at that time being sold at $4.00 a gallon. Grant told him that he would not do that; that he would haul it as he had been hauling, at a stipulated price per gallon. Witness also had a conversation with Joe Brown in the course of which he told him that he had to get work on his own hook; that there wasn't enough in the hauling for the 2 of them and Joe Brown said he would take care of witness in some manner. On April 24th, nothing was done except that Grant bought another car. On April 25th, 1930, Grant and he loaded 2 10-gallon and 2 5-gallon kegs of liquor into Grant's car and drove to a place known as the LaJesse Road. About 2½ miles north of Clatskanine, Oregon. There they met Joe Brown and 10 and 2 5-gallon kegs were unloaded in an outbuilding just across the road from defendant, LaJesse's Road. Joe Brown piloted them to the LaJesse home. They saw the defendant, LaJesse there. After they got there Grant unloaded a 10 and 2 5-gallon kegs at Joe's order into an out building. One 5-gallon keg was loaded in a car driven by a stran-

ger. The balance of the liquor that they had unloaded went into a room toward the front of the house and witness saw LaJesse give Brown several pieces of paper money. Then Brown came out and told them to take the 10-gallon keg that still remained to Westport. LaJesse said he would pilot Grant to the proper place which he did. LaJesse drove a Durant sport coupe, license No. 215485. Joe Brown drove a Ford touring car, No. 314806. After they left LaJesse's home they went to Westport, Oregon. LaJesse got out of his car, got on the porch of a store there and indicated that everything was clear. Grant carried a 10-gallon keg of liquor between the store and house and then up onto the porch and deposited it in a small closet. The sign over the store gives the man's name as Barahan and later on, witness interviewed Barahan and he said he owned both the store and the house. Government's Exhibit 18 is a bottle of moonshine taken from one of the kegs delivered to LaJesse. After it was taken the bottle was labeled and delivered to Shirley with the contents received the same as when he received it. Government's Exhibit 19 is a bottle of moonshine taken from the 10-gallon keg traced to Barahan's residence at Westport on April 25th, 1930, after it was siphoned off the bottle was labeled and delivered to Mr. Shirley in the same condition as when he had received it. On April 26th, 1930, Grant and he went to Vic Scholz's garage at 224 Grand Avenue to see Joe Brown and Joe Brown told them to deliver a 10-gallon keg to Jack Kelly. They went and got 3 5-gallon kegs and he told them also to keep one 5-gallon keg for a pinch, for someone who had to have some

quick, because he didn't know whether they would be able to get any more that day or not, so they were ordered to cache one of the 5-gallon kegs out on the Tualatin Road and brought the other 2 back and delivered them to Kelly. The delivery was made in Jack Grant's Ford Coupe. The liquor was delivered to Jack Kelly at Garage D on Glisan Street, Portland. Government's Exhibit 20 is a bottle of moonshine taken from one of the 2 5-gallon kegs which were delivered to Jack Kelly at Garage D on Glisan Street on April 26th. After the sample was taken, the bottle was labeled and delivered to Mr. Shirley the same as the others. On that day they had a further conversation with Joe Brown relative to a trip that Grant was contemplating to Seattle on his own account and there was a conversation as to how the witness was to make deliveries during Grant's absence since Grant was taking his car, and Joe Brown said he thought that the Chevrolet which the man took that had belonged to Grant would be back so that the witness could use it, and that if it was not that he could deliver in the Ford touring car that Joe had. On April 27th, 1930, Grant and he went out where they had cached the 5 gallons of liquor on the previous day, picked up and delivered it to Garage D on Glisan Street, for Jack Kelly, where he had been on numerous occasions before. Government's Exhibit 21 is a bottle of moonshine liquor taken from a 10-gallon keg delivered to Garage D on Glisan Street on April 28th, 1930, and which he labeled and delivered to Mr. Shirley in the same condition as he had siphoned it off. On arriving back at Grant's home, saw a Chrysler Coupe, 102201 standing in front

of Grant's house. Grant and he took the Chrysler Coupe out in the country off Terwilliger Boulevard and cached 7 10-gallon kegs of whiskey. They came back to town and left the car at the Peerless Garage, Portland. Later that day, Grant and he loaded 40 gallons of liquor in Grant's car, consisting of 4 10-gallon kegs, which they took to Astoria. They cached 2 10-gallon kegs this side of Astoria and took the other 2 10-gallon kegs into Astoria. They met Joe Brown there and Grant told him, in his presence, that they had cached the 20 gallons that they had brought into Astoria after waiting around a considerable length of time for him. Joe took them to the Douglas Hotel where they were assigned to a room at night, Joe Brown paying for the room. The next morning Joe Brown woke them up and told them to get the entire 40 gallons of liquor and bring it into town and drive in back of the Western Hotel, get out and leave the car, which they did. Government's Exhibit 22 is a sample taken from one of the 10-gallon kegs delivered in the garage back of the Western Hotel, Astoria, on April 29th, 1930, after it was taken from the keg it was labeled and delivered to Mr. Shirley with the contents the same as when taken from the keg. After the delivery made at the Western Hotel he went out on the dock and Joe Brown came out to where he was and they had a conversation. He made the statement to witness that his end was the selling end; that he could buy his liquor from $3.00 to $3.50 a gallon, which was cheaper than he could afford to make it and take the chance. He also talked about witness taking over all of the deliveries in Astoria, and that he could make some good whiskey;

that Brown told him he bought his whiskey; that he did not own a still and never had; that he did not have a penny invested in one; that he bought all his liquor; that he had a great many times furnished supplies to men manufacturing liquor and took liquor as payment for the supplies. After this conversation, he and Joe Brown went back to the garage and found their car empty. Joe told them that he wanted them to meet a load of 50 gallons that was coming in over the Longview Bridge. They met Joe Brown at about mile post 90. There was another car with him, being an Oldsmobile Coupe, bearing 1930 Washington License 264353. Joe Brown was driving an Oakland Coupe, 1930 Washington license 297632. As Joe Brown passed Grant and him, he motioned them to follow him, which they did, and after going several miles toward Astoria, they turned off the road about 250 yards where they transferred 4 or 10-gallon kegs to Grant's car, a portion of which they cached about 4 miles from Astoria and 10 gallons were taken to Astoria according to Joe Brown's instructions. They had cached 3 of the 10-gallon kegs. The other 10-gallon keg Brown had previously told them to deliver to Pete Aperges at the Astoria Shoeshining Parlor. The witness having been previously taken there by Brown so that he would know the party to whom to make the delivery. They thereupon drove back to Astoria with the 10-gallon keg, where they met Joe Brown who asked if they had yet made the delivery, but they said "No" as it was yet too light. They walked toward the shoeshining parlor where Grant thought there were too many people passing there and they didn't think it was

safe to make delivery at that time, so they drove around the block and then they made a delivery of the 10-gallon keg into the rear of the Astoria Shoeshining Parlor. There they found Pete Aperges behind a small bar dispensing liquor to a couple of strangers. Joe Brown was also present and witness saw Pete Aperges pay Joe Brown $60.00 in paper money for the 10-gallon keg of liquor delivered. Joe Brown told Grant and him that he wanted them to go back to Portland and when they got there to see Kelly, Neff and Paul Maras and see if they needed anything. He also said he wanted them to meet a load the next day. Government's Exhibit 23 contains a sample of liquor siphoned from a 10-gallon keg delivered to Pete Aperges on April 29th, 1930, which sample was delivered to Mr. Shirley in the same condition as when it was siphoned off the keg. That he had previously seen the Oakland Coupe which had driven up there with Joe Brown; that he had seen it at 224 Grand Avenue about a week or 10 days previous. Art Hines was working on it, putting in a new radiator coil. On April 30th, 1930, Grant and he went out in the country and picked up 2 10-gallon kegs of liquor and delivered one to the Johnson Street garage, after having gone to North 22nd Street and getting the key. The other 10-gallon keg was put in Grant's garage so as to have it available if anyone wanted to have it delivered. Later that day, Grant and he made a delivery of the liquor to Paul Maras at the Overland Hotel. One keg was taken by Paul Maras himself and carried up the stairs, while Jack Grant carried up the other 10-gallon keg. Just before he made a delivery there, Joe Brown

met Grant and him on the corner of Third and Couch Streets, coming across the street from near the rear of Malita's Grocery. He got out of a car driven by Walter Tooze, who was seated in the car. Grant and he drove past the entrance on Couch Street where the liquor was finally delivered. They drove around the block because there was no one in sight to receive the liquor. They made another trip past there and at the second trip Joe Brown was standing talking with Walter Tooze. Paul Maras stood on the curb in front of the entrance where the liquor was delivered and indicated by patting his foot that he wanted the liquor delivered. They thereupon stopped their car, took a 10-gallon keg from the back of the car, handed it to Paul Maras, who carried it inside and Grant took the other keg upstairs. As Grant went through the door, the vice squad came around the corner and passed them. Joe Brown came across the street and said "that was a close call". Witness remarked "It was too close for comfort".

L. I. MOON, a witness called by the Government, testified that Government's Exhibit 24 is a sample taken from a 10-gallon keg of whiskey delivered to the Johnson Street Garage, Portland, on April 30th. It was labeled and delivered to Mr. Shirley in the same condition as when received. Govenment's Exhibit 25 is a sample of moonshine taken from a 10-gallon keg delivered to Paul Maras on Couch Street at the rear entrance of the Overland Hotel, Portland, on April 30th, 1930. It was labeled and delivered to Mr. Shirley in the same condition as when he siphoned it from the keg. That when he saw the defendants, Joe Brown and

Walter Tooze, near the Overland Hotel they were in an Oakland Sedan; that when he first saw them they drove up, both got out of the car, walked to the rear entrance of Malita's Bros. Grocery, corner of Third and Couch Streets, and both went in. Joe Brown crossed the street to where Grant and he were just before they made the delivery; that he saw Walter Tooze in the car later. On May 1st, 1930, Grant and he went to 224 Grand Avenue to see Joe Brown. He wasn't there when they arrived, but they saw Vic Scholz and Hahn. Hahn wanted some liquor delivered to his place, but had no money, but Vic demurred about letting him have any liquor until some money showed up. He finally decided to let Hahn have 5 gallons with which to get started again, for which he was to pay $5.50 delivered. The delivery was made that night. Witness saw Joe Brown later and Grant and he were told to let Jack Kelly have 10 gallons, and that they should get $27.50 that Kelly owed Brown. They made the delivery on the following day. On May 2nd, 1930, Grant and he loaded the 10-gallon keg into the car and delivered it to the Johnson Street Garage after having gone to Kelly's Apartment to get the key. The whiskey that they delivered to the garage was a 10-gallon keg that Brown instructed Grant and him to deliver to Jack Kelly, on the previous day. After the delivery was made, Grant and he went to Apartment 301 Meredith Apartments, Portland, to interview Tom Alstott. They saw him and he told them he was going to quit the "little game" and go into big business; that he already had 30 gallons sold if the liquor was right and he asked Grant and him to deliver

a sample of the liquor to him that evening, which they did, and Alstott said that it tasted a little bit sweet, but the color was good and thought perhaps his customers would be pleased with it. He emptied the liquor from the pint bottle that they brought into a short pint to submit to his customer for his approval. Later that evening, they went to Hahn's apartment at 192-13th Street, Portland, where they saw him and Hahn's partner, Blackie. Hahn asked Grant what the matter was with the liquor; that it tasted kind of sweet and customers had kicked on it. Grant told Hahn that he was not responsible for the quality of the liquor, that all he did was to make delivery. Hahn asked Grant if he had doctored it up before he had brought it there. Grant told him he had not. Grant said that since it hadn't been doctored he knew what was the matter with it and could fix it up with a little glycerine himself. Witness told Hahn they were going to be out a little late that night and perhaps needed a little bracer and asked if Hahn could sell them a bottle. Hahn said sure and went and got the bottle and brought it in. Witness asked the price and Hahn said he was getting $2.00 for it, but that he didn't like to make his money off the fellows that were delivering. However, he accepted the $2.00. Government's Exhibit 26 is the bottle of moonshine that he bought from Hahn at 192-13th Street on May 2nd, 1930. That after he purchased it, he labeled it and delivered it to Mr. Shirley and it was in the same condition as when he purchased it. On May 3rd, 1930, they delivered 20 gallons of liquor to Jack Kelly's Garage on Mill Street, Portland. Government's Exhibit 27 is a

bottle of moonshine taken from one of the 2-gallon kegs that Grant and he delivered to this garage on May 3rd, 1930. It was labeled and delivered to Mr. Shirley in the same condition as when taken from the keg. Later Grant and he went to Jack Kelly's Apartment. Then Grant and he delivered 2 10-gallon jugs of whiskey to James Short. Government's Exhibit 28 is a sample taken from one of the 2 10-gallon jugs of liquor delivered on May 3rd to James Short at 129 N. 5th Street, Portland, the sample being labeled and delivered to Mr. Shirley and the contents being the same as when taken from the jug. About 15 minutes after making the delivery to Short they saw a Chevrolet truck bearing license No. 96260, traveling on Pine Street, Portland, loaded with supplies. A pressure tank was visible near the back of the load. The load, itself, being covered by canvas. Government's Exhibit 29 is a sample taken from a keg containing 3 gallons of liquor that was delivered to Hahn at 192-13th Street, Portland, on May 3rd. The sample being labeled and delivered to Mr. Shirley in the same condition as when received. On May 5th, Grant and he loaded 2 5-gallon kegs of liquor into Grant's car and they took it to 106 N. 22nd Street, Portland. Grant got out of the car and went to the place to see if the coast was clear. They were to make a delivery of those 10 gallons to that address. Witness remained in the car. While waiting in the car a man came out of the house and told him he was an officer and for witness to get out, which he did. The man asked witness if witness had the keys to the back of the car, and he told him he did not. The man asked what

was in there and witness told him he didn't know. The man said he had the keys, opened the door and found the 2 5-gallon kegs of liquor in the car, whereupon witness was placed under arrest and taken to the apartment where Grant and a man called Jimmie and a stranger were in the room. They were taken to the Police Station in the Patrol Wagon and later the officers got in touch with Mr. Shirley at his request and their release was arranged for. At the time of his arrest, he and Grant still had a green keg of liquor that was undelivered. This was hid out on the Lesser Road about 6 miles from Portland, and there were also undelivered 3 10-gallon kegs that were cached about 4 miles. After his release from jail, he, Grant, Federal Agents Baker and Thompson, wet on the Lesser Road and picked up the 10-gallon keg which was turned over to Mr. Kerfoot, the custodian at the Custom House. A day or so later, the same officer, he, and Grant went to Astoria to get the other 3 kegs, but they were gone. He still is employed as a Prohibition Agent and was so employed prior to the time covered by his testimony. He did further work in connection with this case. He was sent out by Mr. Shirley to make some investigation. On his way to Astoria he stopped at Westport and ascertained the ownership of the property at Westport where they delivered the 10 gallons of liquor LaJesse piloted them to. He interviewed Mr. Barahan, who told him that he owned both the store building and the dwelling house adjoining, and that he lived in the dwelling house. That he thinks he can identify Mr. Barahan. After the court requested Mr. Barahan to stand up, witness identified

him as the man he talked with. On May 13th, witness, with Federal Agents Shirley, Staley and Baker went to the ranch that Victor Scholz had piloted them to at the time they loaded the 25-gallon kegs of liquor in the Chrysler Coupe that Vic was driving and the car that Grant was driving and a search was made of the place. That he had been to this place before at the time that Scholz piloted Grant and him in there to load 8 5-gallon kegs of liquor that they found between the Hudson Sedan and the barn. That the defendant, Gus Daskalos, was there that night. That the ranch is near Canby, Oregon. At the time he went there with the officers on May 13th, they found 8 500-gallon mash vats in the "knock-down". There was a sack of gas pipe fittings, a large sack of corks, a gallon of carmel coloring. That Grant and he also made an investigation at Cathlamet, Wahkiakum County, Washington; that with reference to the incident on April 29th, 1930, when he testified concerning an Oakland Coupe, 1930 license 297632, that he met on the Astoria highway and which he testified to have seen shortly prior to that time at the garage of Hines and Scholz at 224 Grand Avenue; that at the time he saw the car there he also saw the defendant, Walter Tooze. Prior to the time that Tooze came in Art Hines said they were having a lot of trouble in keeping the car cool, that he would fix it up but it was going to cost plenty; that he would put in a new radiator coil; that shortly after that conversation with Hines, Mr. Tooze came in, and he had a conversation with Mr. Hines, which he didn't hear; that after Mr. Tooze had gone Victor Scholz said to Grant: "Better

be careful. That was the man that will defend you if you get knocked over." Grant asked Vic Scholz who he was and he said, "Walter Tooze."

MR. GOLDSTEIN: For the record, on behalf of the defendant Joseph Brown and other defendants similarly situated, I move that the testimony of this witness be stricken and that the jury be instructed to disregard it on the ground it is incompetent, irrelevant and immaterial and outside the scope of the conspiracy charged in the indictment, and at variance thereto, in that it relates to separate, isolated transactions, not connected with the one specific conspiracy charged; and for the further reason that there has been no evidence introduced tending to show the existence of any conspiracy as charged in the indictment, between the defendants and the parties affected by the testimony of this witness, and that therefore the acts and conduct of the parties mentioned by this witness now in the presence of the other defendants and not in pursuance to the specific charge, are not in any wise binding upon the defendants now on trial, nor has the witness' testimony any relation to the specific charge mentioned in the conspiracy charge of this indictment.

Motion denied. Exception saved. (558)

Upon cross examination by Mr. Robison, he testified that the first day he met Grant was on April 23rd; that Grant was with him at the time that the first day he left for Astoria to deliver liquor to Pete Aperges. They had 40 gallons. That when they arrived at As-

toria, Grant asked for a man by the name of Kelly; that being the name assumed by Joe Brown. The hotel where the call was made was the Elliott Hotel. Kelly took them to a rooming house, called the Douglas Hotel, where they registered that night. The next morning they left for the 40 gallons of liquor that they had cached; that it was then driven back to Astoria into a garage back of the Western Hotel and there left for someone to get. They never knew who. That the only delivery of liquor that he made to Pete Aperges was on April 29th, at which time he delivered to him in the presence of Joe Brown. Joe Brown bought drinks for him and for Ferguson. On the same day that he delivered the 40 gallons behind the Western Hotel, he went and got the 50 gallons on the delivery that came over the Longview Bridge. They only handled 40 of that 50 gallons. They brought 2 near Astoria and hid it and brought 10 gallons and delivered it to Pete Aperges. That he don't know what became of the 40 gallons that was delivered back of the Western Hotel; that 30 gallons of the shipment that came across the Longview Bridge was hidden. That on May 5th, the time of his arrest, he didn't have an opportunity to take a sample of the liquor to be delivered; that this liquor was gotten from Grant's garage. It was the last 2 kegs that they had in the garage; that the witness also used another name, to-wit: Earl Bradley.

Upon cross examination by Mr. Goldstein, he stated that he first used the name of Bradley some 25 years ago when he was working in Des Moines, Iowa, as a city detective; that he also worked as a private detec-

tive for George McNott, Des Moines, and for the Pinkerton Detective Agency. He was an automobile mechanic which he gave up in December, 1927, when he went to work for the City of Ashland, Oregon, as patrol man. Worked at that for a year and then went back to the garage at Ashland and worked there until he was appointed Prohibition Agent on February 28th, 1930. He went to live with Grant on April 6th and remained there until May 5th, during which time Grant usually got all the telephone calls. On one occasion, he received a telephone call from Joe Brown, at which time he inquired for Grant. First time he met Joe Brown was on April 8th, 1930, when he was introduced by Grant as a friend of his. He was dressed in rough clothes to give him the impression that he was an automobile mechanic and was looking for a job; that he made purchases of liquor on his own hook and had a drink about a half a dozen times in the month he was working for Brown; that he felt it was part of his job to drink liquor; that he didn't drink in any large quantity; that he once paid a dollar for the liquor that he got from Jack Kelly and he paid $2.00 for the bottle he got from Hahn. That Joe Brown didn't ask him to make these purchases and were separate and distinct from any employment he had with Brown. In the course of this trial he claimed his employer to have been Joe Brown, who was the only man he ever felt was his employer, but his actual employer was the Government. He received his instructions from Brown and sometimes from Vic Scholz. The deliveries were to be made, the prices to be asked were fixed by Brown or Scholz and

by none others. In his dealings with Kelly he regarded him and dealt with him as a purchaser of liquor from Brown and many times he was confronted with obstacles in the way of making delivery to Kelly because Kelly was not paying Brown the money or Brown claimed that Kelly wasn't good pay. His dealings with Hershey were simply as a buyer of liquor and so far as he knew Hershey and Kelly had no connection or relationship together and so far as he knew, Kelly didn't know that they were making any deliveries to Hershey, nor did he have any knowledge of the price that was charged against Hershey; that the prices were different with respect to different defendants. Peter Aperges paid $60.00 for 10 gallons, Jack Kelly, he believed, paid $4.00 a gallon. Hahn was simply a buyer to whom he made deliveries and in his dealings with Hahn he was acting under instructions from Brown and Scholz. Hahn and Hershey were partners. Later on, just a short time after they began making deliveries to them they were arrested and Hershey went to jail. Then Hahn kept the business for him and deliveries after that were all made to Hahn. So that whatever dealings he had with Hahn after Hershey's arrest, Hershey had nothing to do with it so far as he knew and it was simply due to the personal request of Hahn that delivery was made to him and liquor was sold to him; that he didn't make the statement that he once went over to Hahn's place and said he needed a bracer; that perhaps he did testify under direct examination that he told Hahn he and Grant needed a bracer and bought a bottle of whiskey for $2.00. He now recalls that testimony, but had

temporarily forgotten it. That he wanted a bracer as an excuse to buy liquor. He wanted to lead him to believe that he wanted some liquor for his own personal use; that it wasn't true and that he deceived him. That his purpose in making that request of Hahn was to induce him to sell him the liquor so that Hahn could be arrested for that sale; that on one occasion he had a glass of liquor at Hahn's place when Hershey and Hahn were together; that he wanted them to get the impression that he was one of a drinking crowd; that with respect to his dealings with Alstott they had no relation or connection with any of his dealings with Kelly, Hershey or Hahn, and it was a separate and distinct transaction so far as he knew. That on one occasion he drank liquor in Alstott's apartment; that with respect to his dealings with Paul Maras, they had no connection with any of his dealings with Kelly or Hershey or Hahn or Mooney; that was a separate and distinct buy from Joe Brown with the witness's help; that he actually delivered about 500 gallons of whiskey during the time he was working for Joe Brown between April 8th and May 5th, of which the 29 exhibits were all that he kept; that the most that was kept at any one time in Grant's garage was 110 gallons and all of that left the garage and went to customers or consumers; that 2 kegs that he was about to make a delivery of when he was arrested, being the last taken from Grant's garage; that whatever dealings he had with a man by the name of Daskalos were separate and distinct from any dealings he had with these others whose names he mentioned outside of being employed by Brown and

Schatz, and that is also true with respect to James Short, LaJesse and Barahan. With respect to Pete Aperges, it was a separate and distinct buy as contrasted with the other buys in the City of Portland; that all of his liquor transactions were with Joe Brown and Scholz and none others except as they were delivered to their customers. But as far as the control of his movements were concerned, his dealings were with Brown and Scholz.

Q. Then we take it from your answers, Mr. Moon, that all your liquor transactions, as far as actual working employment is concerned were with Joe Brown and Scholz and none other? That is true?

A. Except as we delivered to their customers.

Q. I understand that, but as far as the control of your movements?

A. Yes, sir. (595)

In so far as he knew, Hines was attending strictly to his garage business and took no part in the liquor transactions; that in all of his dealings with the defendants named, he did not at any time so far as he knows, come in contact with any of these other defendants, to-wit: George Moffett, the Hodgsons, Louis Anderson, Rex Keene, John Gilliland, Rudolph Bouthellier, Paul Richardson, Carl Thompson, W. O. Zielenski, Pete Aperges, Andreates, Emanuel Wolf, Earl Trowbridge, Dominick Mussorafite and B. Schats, with the possible exception of Trowbridge, and that was not in any liquor transaction and with that exception he would not know any of those other defendants if he saw them.

Upon cross examination by Mr. Stearns, with respect to the delivery to Paul Maras at 3rd and Couch Streets, Portland, he testified that he didn't see Tooze and Brown drive up but when he first saw them they were both sitting in the car near the back of Malita's Bros. Grocery Store; that Tooze and Brown went into the store and later Joe Brown came out and went across the street to where he and Grant were. Then he, Brown and Grant had a discussion and they proceeded to make the delivery, Joe Brown not accompanying them, but going back to Tooze's car where he stood talking with him; that witness had no conversation with Mr. Tooze, and that so far as he knows Tooze had nothing to do with the delivery other than watching; that the reason that he believes that Tooze knew that a delivery was being made there was because he was laughing about it afterwards. He doesn't know that Tooze knew there was a delivery of liquor to be made beforehand or not.

Q. Just read your notes to the jury as you entered them at that time.

A. (Reading) "April 30th at 10 A. M. Grant and I went out in the country and picked up two ten gallon kegs and delivered one of them to Jack Kelly at his garage on Johnson Street, delivery was made at 11 A. M. The other keg we brought and put in Grant's garage. At 4 P. M. Grant went to 13th and Salmon Streets and met Joe, who took Grant out in the country and showed him where seven ten-gallon kegs of liquor were cached. Joe told Grant to take two tens to the Overland Hotel tonight. We made delivery to Paul, who we found

does not live in the Overland Hotel at all, at about 11:30 P. M. Paul is a Greek about forty years old, five feet nine inches tall, 165 pounds. He lives on Couch Street between First and Second Streets, on the south side of street. Delivery was made in the first door east of Chinese laundry on south side of Couch Street, between First and Second Streets, and was carried upstairs, one keg taken by Paul, the other Grant carried up and left at top of stairs. We then went out in country and got four ten-gallon kegs and brought to Grant's garage, arriving at 12:45 A. M. One ten-gallon keg still remains in cache, and we have five tens in the garage here in town. While Grant and I were waiting to make delivery we were on the corner of Third and Couch, and Joe and Walter Tooze went into the store of Maletis Brothers, on the opposite corner. Tooze got out of a large car standing near. I think it was an Oakland eight sedan."

Q. And this is the notebook that you have been using throughout the course of your testimony, for the purpose of refreshing your memory, is it not?

A. Yes.

Q. May I see it? (Witness hands notes to counsel). Now then, as a matter of fact, this item with respect to Mr. Tooze and Joe Brown being down at the corner of those streets at that time, was written after you had made up—completed your report for the day, was it not?

A. No, sir, it was not.

Q. Sure of that?

A. On the same day that I made the rest of the report that date.

Q. On the same day?

A. Yes.

Q. Not at the same time, however?

A. Always following the day, whether it be all night sessions or day sessions, I sat down and completed my notes.

Q. You did not make up this sheet—this sheet here, No. 68—until after you had completed sheet 67, some time afterwards, wasn't it?

A. I say I did make them both up at the same time.

A. At the same time?

A. Well, I didn't write two sheets at once. I will admit that.

Q. No, we understand that.

A. But simultaneously.

Q. I assume that you are not ambidextrous. I want you to look this over and say if you hadn't already made a complete report concerning that alleged delivery, prior to the time that you made up this Sheet No. 68. Just look them over now. Take your own time about it.

A. No, sir, my notes were not completed until that was made.

Q. They were not completed until that was made?

A. No, sir.

Q. Did you sit down and write this last sheet

immediately following the sheet that preceded it?

A. I was already sitting down and I wrote them both. I didn't get up between the time that I wrote the two.

MR. STEARNS: If your Honor please, at this time we desire to offer the two sheets from the note book, as of the 30th of April, 1930, in evidence. Any objection to that?

MR. ERSKINE: We haven't any objection.

THE COURT: It will be admitted.

(Marked Defendant Tooze's Exhibit "B"). (606-608)

There were then introduced in evidence defendant Tooze's Exhibit "B" being the notes of witness as to what transpired on April 30th, concerning which he had previously testified. Witness further testified that he had made 4 or 5 prior deliveries to the Overland Hotel, at none of which Mr. Tooze was present. That he was not acquainted with Mr. Tooze and had never any conversation with him, nor ever come in contact with him during all the time that he was employed in this business.

Upon cross examination by Mr. Ryan, he was asked concerning his previous testimony as to when he found out the name of the defendant, Daskalos, in which course of which he stated he found it out about the time he got arrested, which was on May 5th, 1930. He was told by Vic Scholz a short time before he was arrested that the place at Canby belonged to Gus Daskalos. On May 12th, he swore to an affidavit for a search warrant of this ranch at Canby, in which the owner was described

as John Doe. Witness was thereupon requested to read his notes for April 21st as to what transpired on that day concerning which he had already testified; that at the time he went to the farm at Canby he thought the man who helped load the car with liquor was Joe Brown's brother. That thereupon the notes were introduced, marked defendant Daskalos' Exhibit "C".

Q. Now then I wish you would turn to your notes while we are waiting, as of April 21st, and read that to the jury, touching upon the time you went to the Canby ranch?

A. You want the entire notes for that day?

Q. I want the entire notes insofar as they appertain to your visit to the Canby ranch. I believe the first part of your notes refer to a visit to Vic Scholz garage at 224 Grand Avenue. I am not concerning about that. However, you may read them all.

A. "About 6 P. M."—that is where they begin with reference to anything concerning going over to the ranch.

Q. I want everything concerning or appertaining to your visit to the ranch at Canby, Oregon, on that day.

MR. ERSKINE: I suggest that he read the entire day of the 21st, then there won't be any dispute as to what is intended to be read.

MR. RYAN: All right with me.

COURT: All right, read it all.

A. (Reading) "April 21st, went to 224 Grand

Avenue with Grant twice during the day trying to get in touch with Joe Brown to see if he was going to have some liquor come in tonight, as Neff had 'phoned about 10 A. M. and wanted 20 gallons delivered some time during the evening. About 6 P. M. Joe 'phoned Vic while we were at the garage, and told Vic to have us at Canby at 9:30 P. M., and Vic was to meet us and take us to the farm. Vic met us at 9:40 P. M., turned to the left at stage depot, and we followed about one-fourth mile, when he stopped, and we drove alongside of his car. He had a woman with him. He told us to follow across the river and watch when he turned to the left, to follow this road about a mile, and when he turned to the left again into a narrow private road, for us to turn out our lights and follow him slowly, so it would appear that but one car was going in. This we did, following down private road about a quarter of a mile to a house. To get to this place, turn left at stage depot in Canby, and cross the river bridge. Keep on paved road about 1½ miles from bridge to a gravel road turning to the left. Follow this gravel road about three-quarters to one mile, to lane again, turning left. This last road turns off gravel road opposite a house on right of road. I think the farm house to which we went can be seen from gravel road when turn is made. When we were driving in on this road we saw several flashlights, showing there were several men there. When we reached the house we turned to the right and was met by a man who spoke with an Italian or Greek

accent, and who told us to put out our lights and stay where we were. There were two other men present, but owing to the darkness did not get a look at either of them. The man who met us then got into Vic's car and drove west from where we were, and in a few moments we could hear them loading Vic's car. They were gone about ten or fifteen minutes, while we sat in our car near the house; and one of the men we had seen when we first drove in, went south from the house with a flashlight for a distance I should judge of about 100 to 150 yards, when his light disappeared. No buildings were in sight in that direction, in the dark. Presently he again came in sight and proceeded to the house and went inside. There was another man besides the one who met us and took charge of things, and he went with the car to load up. It was quite muddy where our car was standing, and when Vic's car was loaded and had been driven to a place just beyond the house from where our car stood, and where it could be passed, the man who had driven Vic's car in came to our car and said he would drive it in, as it was pretty soft in there, and he knew where to drive. He also said it would take a hundred dollars worth of gravel to fix the yard so it would be safe. He drove our car about 25 or 30 yards west of the house to a barn, where the big Hudson sedan mentioned in my notes, as having brought 100 gallons over Wilsonville Ferry, stood, and between sedan and barn were eight five-gallon kegs, which we loaded into our car. Vic, the man who drove both

cars in, and another man, were present with Grant and I when we loaded up. It was arranged that Vic was to bring his load to the garage rented by Grant. This garage is located on corner of East 8th and Umatilla Streets. We reached the garage at 11:15 P. M. ahead of Vic, and backed in and unloaded four five-gallon kegs. Then run our car out in the street, and in a few minutes Vic drove up, and he and woman got out and Grant backed Vic's car in, and we unloaded twelve five-gallon kegs from it. Vic's car was then drove out and Vic and the woman got in after Vic told Grant he would go on over and have Neff's place unlocked when we got there. We drove to 129 North Fifth Street, to Neff's place, and delivered four five-gallon kegs of liquor, at about 11:45 P. M. We now have in Grant's garage 110 gallons of liquor. The farm we went to, we were given to understand, belongs to Joe Brown, but he has another man on the place. This man who met us and took charge of affairs appeared to be about 45 or 50 years old, 5 feet 8 inches tall, weight 165 or 170 pounds, and maybe Joe's brother. It is also quite possible this is where the still is located, for there seemed to be too many men around to merely be using the place as a cache."

Q. You thought at that time it might be Joe Brown's brother, did you, Mr. Moon?

A. Possibly.

Q. Well, possibly. That is the information your notes contain, do they not?

A. That information is contained in my notes, yes, sir.

Q. Then the truth of the matter is you thought at the time this man who you now say was Gus J. Daskalos, one of the defendants, might possibly be the brother of Joe Brown?

A. Yes, sir.

Q. You didn't know who he was?

A. No, sir.

Q. You didn't know whether he was an Italian or Greek, did you?

A. No, sir. (620-623)

With respect to delivery to Barahan, he never made a search of the records to ascertain who owned the Barahan store and the house near the store, but that he talked with him after his arrest during which the witness represented himself to be an insurance man, and in the course of which Barahan stated that he had his property covered by insurance and that he owned both the store building and the dwelling next to it; that he deceived the man to whom he was talking and to whom he represented himself to be an insurance man. Referring again to the affidavit that he made for the search warrant of search of the ranch at Canby, he testified that he swore to that effect on May 12th, 1930, and in the application he described Daskalos as John Doe whose true name was unknown. He testified that he didn't know further than the information that he had had from Scholz as to what his name was and he didn't want to make any mistake. He testified, however, that he recognizes Gus Daskalos as the man he saw there the

night they got their liquor; that he didn't know whether he owned, controlled or supervised the ranch. There was thereupon introduced in evidence defendant Daskalos' Exhibit "D" being the affidavit for search warrant of the ranch of Daskalos, wherein the owner was described as John Doe.

Upon cross examination by Mr. Page, he testified that when he made reference to Joe Brown's brother he referred to Wm. Brown, but that Wm. Brown was not there that night, and that during all the time that he was working under the directions of Joe Brown, he never had any business relation nor ever came in contact with Wm. Brown, the defendant.

Upon cross examination by Mr. Long, he stated that he made about 3 deliveries at 129 5th Street, and that he never had any conversation with Mr. Short, and that he didn't see him to his knowledge. All that he knows is that there was some liquor delivered at 129 5th Street. He had been told by someone that the liquor was to be delivered to Mr. Short or Neff, but he never met him personally; that he merely understood that Mr. Short was buying liquor from Brown; that when he wanted it he would 'phone Mr. Grant or the witness and they would deliver down at that place, and then he would pay either Mr. Grant or Mr. Brown or Mr. Scholz or someone else for the liquor; that he didn't know what Mr. Short was paying for the liquor, but that $4.00, he believed, was the customary price. So far as he knows, Short was not a partner of Brown or any of the others, and that to his knowledge he was merely a purchaser of liquor buying on his own account; that so far as La-

Jesse was concerned, he had never met him personally prior to the time he delivered liquor to his place, and that it involved just that one transaction when 20 gallons of liquor were delivered to LaJesse. He assumes that LaJesse paid for the liquor, as he saw money change hands. So far as he knows, LaJesse was not a partner of Joe Brown or any of the others; that he was merely purchasing the liquor from Mr. Brown as an independent liquor dealer. There was then introduced in evidence defendant LaJesse's Exhibit "E" being the notes with reference to the delivery of liquor to LaJesse.

Re-direct examination:

Q. Now one more question. Counsel have asked you about the various connections of some of these defendants—the defendants Kelly, Daskalos, Barahan, Short, and others, with Joe Brown and Vic Scholz. Now I will ask you, as far as you personally know, do you know whether or not the defendants, Jack Kelly, Gus Daskalos, Barahan, LaJesse, or any of the other defendants, did have any connection with Joe Brown, other than what you have testified to?

A. No, sir, I do not. (638)

J. W. CONNELL, a witness called by the Government, testified that he was Sheriff of Washington County, Oregon, since January 5th, 1929; that he saw a Chevrolet truck T-1009297, bearing 1929 Oregon License T-97053 on September 4th, 1929, at a place on the Pacific highway near Rock Creek Bridge on the road toward Portland. It was pulled off on the side of the road. It was standing there with a flat tire. It had

been deserted. It was thereupon towed into Hillsboro. On the truck they found 17 10-gallon kegs of liquor.

MR. GOLDSTEIN: I object to the inquiry concerning this Chevrolet truck, whatever it is, on the ground it is incompetent, irrelevant and immaterial and does not tend to support or prove any of the issues charged in the specific count in the indictment, to-wit, the conspiracy count, in which I am particularly interested, and other defendants who may be likewise.

COURT: Overruled.

MR. GOLDSTEIN: Exception. (640-641)

ROY CAMERON, a witness called by the Government, testified that in the Spring of 1930, he lived close to Crabtree and Scio in Linn County on the Zielenski ranch. He moved there about February 15th, 1930; that on April 20th, 1930, Frank Hodgson and Emanuel Wolf came there and first talked with Bill Zielenski, then all three went over to where witness was down in the strawberry patch and had conversation relative to the use of the barn for $250.00 a month, of which Mr. Webb and he were to receive half for 2 months' and a half after two months the rent would be $500 a month, the purpose being to run a still in the barn. Witness said he would talk it over with Mr. Webb, who was a partner of his on the lease of the ranch; that he did so and they agreed to it. They were also to receive a dollar an hour for the hours they worked in preparing the barn ready to set up the still. Of the $250 Bill Zielenski was to receive $125 and he and Webb together were to receive $125. The next he saw Hodgson was on May 4th or 5th,

1930, when he delivered them plans and specifications of the work he wanted done there. He wanted them to make a concrete floor and tear down some partitions. The work had already begun on May 2nd as orders had been given to Bill Zielenski and when Frank Hodgson came on May 4th they were already tearing down the partitions in the barn and doing some concrete work. About May 4th or 5th, 1930, Paul Richardson came and started setting up the vats. He saw Frank Hodgson in a Chrysler coupe and also in an Oldsmobile coupe. Paul Richardson worked there setting up the vats, then they put their mash down on May 11th. After Paul Richardson there came Frank Jelatine on May 15th. The mash was about ready to run. After Frank or "M" the drivers came, they being Rudie, Rex and Carl. He don't know their last names. That he might have heard their last names, but don't remember them now; that was all the men that were there that he saw; that a still was set up there immediately after the vats were set up by Paul Richardson and Frank Jelatine. The first liquor that was run off from the still was Friday or Saturday after it was set up about May 16th or 17th, 1930. Frank Hodgson came there quite often. Frank Hodgson's wife, Elsie, came there the first time between May 20th and May 25th. She came in an Oldsmobile coupe. Saw her again about June 20th, 1930, coming in the same coupe. She came into the house on that occasion and was going to make a settlement on how they stood but she gave Frank Hodgson a $100 to buy gas with and didn't give them any. She came there about 9 o'clock at night. The still was there until July 7th, when it was moved

out by Frank Hodgson and Carl. The outfit was dismantled by Paul Richardson and witness helped him. He was notified to tear down the still by Paul Richardson, whereupon he went and helped them tear it down on July 7th. The still was hauled away in trucks by Carl and Frank Hodgson, they using a Ford truck and a Chevrolet delivery car. Paul, Frank Hodgson, and Carl all assisted in loading the trucks. Saw Frank Hodgson again the night of July 8th at the Zielenski ranch. Carl was with him. Frank came back after the motors and pump and electric machines that he had, but witness stopped him, stating that he would like a settlement before he hauled that stuff out. That Frank promised to settle within 2 weeks and would give him what money he could, which was about $45.00. He owed him about $240. About the middle of the month Walter Tooze and Frank Cameron and Bill Webb were there. This was in July of 1930 and after the visit of the officers there in connection with the still, the officers coming there about July 9th. The only one he knows of the officers was Deputy Sheriff Rohr.

Q. What conversation, if any, did you have with Mr. Tooze on that occasion?

MR. GOLDSTEIN: Just a moment now, for the purpose so the court might understand our position. From the testimony of this witness it has already developed that whatever transpired in connection with the operation and maintenance of a still on his ranch, it had ceased on July 8th, and whatever may be said with respect to any alleged illegal transaction in connection with that still or

conspiracy or any of the members in connection with that still, had ceased and terminated on July 8th, regardless of what the indictment may say as to the existence of any other conspiracy and I therefore object to any statements made by any of the defendants, or any persons, subsequent to July 8th, on the ground that it is a narrative of a past transaction and not in pursuance of any relation to any of the specific charges in count one of the indictment.

MR. STEARNS: If your Honor please, there is one point where I am somewhat in conflict with counsel for Mr. Brown. As far as Mr. Tooze is concerned, I want the record to show that we have no objection to this conversation.

COURT: The objection will be overruled.

MR. GOLDSTEIN: Exception as to the defendant Joe Brown. (658-659)

Witness thereupon testified that Mr. Tooze said that he had a little case over there and that he just dropped in to see them. They understood he was Frank Hodgson's lawyer and the subject came up about Frank Hodgson and about the still being knocked over. Then Tooze said he wanted them *not* to identify the fellows there, but kind of misrepresent them or say there was something about them that they couldn't recognize them for sure as the same fellows. He was referring to Paul Richardson, Frank Hodgson, Rex and Carl; in fact, all the fellows that were working there. Witness told Mr. Tooze that if they did anything like that they could get them for conspiracy, whereupon Tooze said that it was

not so if they didn't swear to it; that they could swear that they looked like the parties, but they were not dressed alike and couldn't swear for sure whether it was or not; that they were to do this when they came to trial. When Mr. Tooze left, he left with Bill Webb and Frank Cameron; that during the conversation, there was also present Nola, a daughter of E. L. Webb; witness' wife was in the next room and later E. L. Webb came up.

MR. GOLDSTEIN: I would like to move the testimony of this witness as far as Joe Brown and the other defendants—I am not speaking of Mr. Tooze—as far as Joe Brown and the other defendants who desire to exercise the same right, I wish the record to show we move at this time that the testimony of this witness be stricken out first, upon the ground that it is not in support of these specific charges of conspiracy alleged in count one of the indictment, and second, upon the ground that the latter part of his testimony, concerning which we move, was in relation to a past transaction and not related to or in furtherance of the alleged conspiracy.

COURT: Motion denied.

MR. GOLDSTEIN: Exception. (661)

Upon cross examination by Mr. Robison, he stated that it was about the first of May that a stranger came up to where he was down in the strawberry patch and wanted to rent the barn, for which they were willing to pay $250.00 a month; that they agreed to it; that the parties already told them that they wanted to run a still in the barn and in the second month they would pay

them $500 to run a still in the barn. Witness was to get his half of the $250 for running the still in the barn. Witness helped them fix the barn and was there when they fixed the mash. That for the dollar an hour he was to get he was to help tear down the barn and put in a concrete floor for drainage for the still; that he saw the still operate and saw it run; that he got such liquor off it as he wanted to drink; that he might have taken a bottle of liquor from the still to the house.

Upon cross examination by Mr. Helgerson, he testified that the first time Elsie Hodgson came out there was about the middle of May or about May 20th. The next occasion she came out was when Elsie Hodgson gave her husband $100; that he didn't know Frank Hodgson's name until after the still was broken up; that he went by the name of Frank King and also Frank Miller; that he was told his name was Frank Hodgson by the officers. That Frank Hodgson would refer to his wife as Elsie Hodgson. All he knows about Frank Hodgson's name was what some of the officers told him after the case was made and after witness came down for the preliminary hearing which was held the latter part of July, 1930.

Upon cross examination by Mr. Goldstein, witness testified that he agreed with Zielenski, Emanuel Wolf and Frank Hodgson to rent his ranch for the use of erecting a still and manufacturing liquor there. Zielenski was the owner of the ranch and he and E. L. Webb were the lessees of the ranch. In rent for permitting the use of their ranch, he, Zielenski and Webb were to receive $250 the first 2 months and thereafter $500 a

month. He made no agreement with anyone else for the manufacture of liquor at his premises at Crabtree. He entered into no agreement with the people whose names he mentioned to sell any of that liquor, nor to possess liquor, nor to transport liquor, nor to operate a still at Stayton, Marion County, nor to operate a still in Seattle in King County, Washington, nor to operate a still in Mason County, Washington, nor did he enter into any agreement with any of these people whose names he mentioned to sell liquor to any people that desired it in any place in Oregon or Washington. The extent of his arrangement or agreement with these people being confined to the operation of a still between Crabtree and Scio, Oregon. He had heard of Joe Brown, but never saw or heard of Victor Scholz, George Moffett, Art Hines, Louis Anderson, LaJesse, Daskalos, Kelly, Peterson, Maras, Alstott, Mooney, Hershey, Hahn, Short, Aperges, Benakis, Barahan, Andreates, Trowbridge or Mussorafite. Never had any business dealings or arrangements with them. Witness further testified that he never entered into any agreement or have any understanding with any of them to manufacture liquor in the State of Washington, nor did he have any agreement with any of them to transport, possess or sell liquor in Washington, nor did he have any agreement with any of these people whose names were just mentioned to operate any still other than at Crabtree or to sell, possess or transport liquor in Oregon. At the time he entered into an arrangement with Zielenski, Frank Hodgson and Webb, for the use of his ranch, he did not know there was such arrange-

ment elsewhere, nor did they ever discuss it with him, nor did he ever understand at that time that he was a partner of any others in connection with any still operation any place other than at Crabtree.

Upon cross examination by Mr. Stearns, he testified that he supposed he was named as a co-conspirator, but that he was not indicted as a defendant; that he appeared before the Grand Jury and testified and didn't have any assurance that he would not be indicted other than that there was just rumors that he is the father of Frank Cameron, and that Frank Cameron helped operate the still; that at the time he entered into the arrangement with Frank Hodgson, he didn't know him by that name and only learned it at the preliminary hearing on July 22nd, 1930. The officers came to their place the day after the still was moved, and it was several days afterwards that Mr. Tooze came. That he came with Bill Webb and Frank Cameron; that he had never seen Mr. Tooze before; that about 3 weeks or a month afterwards Zielenski brought proceedings to oust him from the ranch, and that he was very much perturbed at the thought of being ousted; that he sought legal advice upon the subject and went and saw the District Attorney of Albany; that during the course of his conversation with Mr. Tooze, witness told him about the officers having been there and that he had made statements to them, and that E. L. Webb had been arrested and later released; that he remembers that Mr. Tooze told him that he didn't have to answer the questions asked by the officers and they had no right to make him talk, but having decided to talk that they did the right thing in

telling the whole truth; that Mr. Tooze also told him that if the officers had made any promises of immunity the promises didn't amount to anything, and that the U. S. Attorney wouldn't approve such a course.

Q. Now, one more point. Do you remember that during the course of that conversation Nola Webb spoke up and said about the raiding officers having some forty or fifty photographs with them when they came up to your place and having photographs of different men and having passed them around among you people; do you remember that?

A. Yes, sir.

Q. Had you forgotten that when you testified on direct examination?

A. On this case?

Q. Yes.

A. At this time?

Q. Yes.

A. Yes, sir.

Q. You had forgotten that when you testified?

A. Yes. You have refreshed my memory now.

Q. Do you remember whether you testified to that fact before the Grand Jury?

MR. STIPP: Object to that question, Your Honor—what he testified to before the Grand Jury.

MR. STEARNS: It is a question of testing his memory, Your Honor, his recollection.

COURT: He may answer. Do you remember testifying to that fact before the Grand Jury?

A. I don't think the question was brought up about it in the Grand Jury.

Q. As a matter of fact, you do recall when these officers came out they had a large number of photographs which they passed around you people for identification. You remember that, don't you?

A. I don't know just whether they passed them.

MR. ERSKINE: We ask they designate the date these officers were supposed to be there with these pictures for identification.

MR. STEARNS: It was the date they came up there; the first time they came up, I believe. Isn't that correct?

A. No, sir. They didn't have no pictures the first time they come up.

Q. When did they come up with these pictures?

A. Well now, I just don't remember.

Q. How many times had they visited your place before Mr. Tooze came?

A. Well, I couldn't just say to that either.

Q. It had been a number of times, hadn't it?

A. Yes, several—they had been there several times.

Q. It was before Mr. Tooze came that they had brought these photographs there and had shown them to you people? Is that not true?

A. I will have to study about that. I can't quite recall. There was so much took place there, it is pretty hard to tell of the time, but it seems to me it was along at a time after that when the officers brought the pictures really.

Q. Well now, don't I understand you to have testified that during the course of this conversation something was said about these photographs being passed around?

A. No, I will have to state that I don't believe it was,—that I don't believe that night—was a different time that Nola was talking about the pictures.

Q. You talked to Mr. Tooze another time about it, did you?

A. No, not to Mr. Tooze, was talk about pictures at all that I can remember of.

Q. You wouldn't say it was not talked about, would you, Mr. Cameron?

A. No, sir, but I don't think it was.

Q. Do you recall that it was Nola Webb who raised that night this question of identification? Don't you remember that?

A. No, sir.

Q. Don't you remember Mrs. Webb speaking up and saying that she did not know whether she could identify any of these people? Don't you remember that?

A. No, sir.

Q. Don't you remember that? Now, this is very important, Mr. Cameron.

A. Well, I don't remember her saying that—she might have said it because there was quite a lot of time I was not in there.

Q. I see. In other words, you were in and out?

A. Yes, sir.

Q. During the entire course of this conversation sometimes you would be in, sometimes you would be out? Is that correct?

A. Yes, sir.

Q. So that you only got snatches of the conversation that took place there?

A. Yes, sir.

Q. Is that right?

A. Yes, sir, I was out some of the time. I don't know as I was in and out, but I was out part of the time.

Q. Well, how many times during the course of the conversation did you leave the room, do you remember?

A. Just once that I remember.

Q. Were you gone for any great length of time?

A. Well, about fifteen or twenty minutes.

Q. Sir?

A. Just a few minutes, if I remember right.

Q. While you were in the room there was a good part of the time that you were not paying close attention to the conversation I take it? Is that right?

A. Well, I don't know if I was or not.

Q. Sir?

A. I don't know whether I was or not.

Q. You don't remember that. Now, in order to refresh your memory I will ask you this question: Isn't it a fact that when this question of identifica-

tion came up Mrs. E. L. Webb spoke up and said she did not believe that she could identify more than two of these men who had been operating the still or connected with its operation? Do you remember that?

A. Well, I couldn't just remember it.

Q. You can't remember. You wouldn't say that she did not say that?

A. No, sir.

Q. Now, in order further to refresh your memory was it not at that juncture and in relation to that observation by Mrs. Webb that Mr. Tooze spoke up and said that unless you could be positive—when I say "you" I include all who were present that night—unless you could positive to your identification, you ought not to positively identify them. Do you remember that?

A. Well, there was something said to that effect, yes, sir.

Q. In other words, didn't Mr. Tooze explain to you people there that if you knowingly undertook positively to identify one when you were not certain of that identification it would be perjury? Don't you remember that?

A. Yes, sir.

Q. Sir?

A. Something said to that.

Q. That if you believed—that is, if you people believed that you knew or that a certain individual was so and so, or so and so, it would be proper to

say "yes, this man looks like so and so, he may be dressed a little bit differently, or possibly he might have worn a mustache then, he may be smooth-shaven now, but he looks to me like the same man." Do you remember that? Do you recall that?

A. Well, really he said—

Q. Just answer that question.

MR. ERSKINE: Let him answer.

COURT: Go ahead, answer. Answer in your own way. You are testifying.

MR. STEARNS: All right.

COURT: The way you remember it. Go ahead, in your own way.

A. What he said about that he said we could say they looked like the same man in every way, but still there was a little doubt there of it not being him; he might be dressed a little different or did not seem that he had those clothes on or something.

Q. I see. Now, let me get back to this question of immunity. Do you not remember that while Mr. Tooze was there he advised you people that in order to protect yourselves you insist upon Grand Jury subpoenas being served upon you before going before the Grand Jury and testifying? Don't you remember that? (697-702)

Upon re-direct examination, witness testified that at the time Mr. Tooze was there he had had a general disagreement with Mr. Zielenski over matters concerning the ranch.

Q. Now, Mr. Goldstein asked you if you had heard about Joe Brown during these operations up there at your place, and what was your answer to that?

A. I told him yes, I heard of it.

Q. How did you hear of Joe Brown in that connection?

A. Through the general talk of the boys that worked there.

Q. By boys who worked there, whom do you mean?

A. Like Paul Richardson, Frank and some of them.

MR. GOLDSTEIN: If the Court please, unless there is some better identification than mere calling first names, I move that the answer be stricken out. I don't know just what Frank it is. There are millions of them.

COURT: Specify who Frank is.

MR. GOLDSTEIN: I move it be stricken out.

Q. Who was Frank?

A. Frank Hodgson, Paul Richardson and different of the boys. I heard his name quite a bit along after they was there awhile. (704-705)

that he had heard the name of Joe Brown mentioned through the general talk of the boys who worked there, Paul Richardson, Frank Hodgson and the others.

E. L. WEBB, a witness called by the Government, testified that he lived on the Zielenski ranch near Crab

Tree, Linn County, Oregon, moving there about May 15th, 1930. He was hired by Mr. Zielenski to help clean the barn for the purpose of the still. After the barn was cleaned out a truck came with tanks which were set in the barn. The truck was driven by a man by the name of Red who was supposed to be the boss. His other name was Hodgson. Besides him, there was a man by the name of Richardson, who set up the vats. Besides Hodgson and Richardson, there was a fellow by the name of "M". The still was set up about May 11th, 1930. He and Roy Cameron leased the place from Zielenski. Cameron submitted the proposition to him about renting the place for a still. He and Cameron talked it over with Zielenski and decided that they would do it and several days later Hodgson and a man by the name of Wolf came. Hodgson showed Mr. Zielenski what to do with respect to the barn. They put in a cement foundation where the boiler sets and the vats, and they also set in an ager. After the vats were set up, they were filled with water, sugar, yeast, bran and corn. It was set up from 3 to 4 to 7 days. Then the boiler was set up and they made whiskey. Hodgson was there when they ran off the first liquor. Then the liquor was put in kegs and aged, then placed in cars or trucks and taken from there. They were taken away by a fellow by the name of Rex Keene. Then a lady by the name of Ruby came out there with booze. He saw this lady some 3 or 4 times after that. She left on one occasion with some booze in her car. The still was moved away about July 7th or 8th. On one occasion, he had a business transaction with her. There were present Mr. Cameron and

Hodgson and Cameron's wife. He learned the lady's name to be Ruby Hodgson. Mr. Hodgson told him that the reason they were going to move the still was that the officers were getting close. After the still was moved the officers came that evening. A few days after the still was moved, Mr. Tooze came to the place. He saw him in Roy Cameron's house.

Q. And what conversation if any did you have with him?

MR. GOLDSTEIN: May I ask just one question preliminary to a motion I am going to make?

COURT: What is the purpose of the question?

MR. GOLDSTEIN: The purpose of the question is to show that whatever contact he had with any alleged agreement or conspiracy to operate a still out near Crabtree on his ranch, had completely terminated at the time of this alleged conversation with one of the defendants. I want to ask him whether that is a fact.

COURT: I don't think that he can express an opinion as to when the conspiracy ended. No, that would be interfering at this time. You may do that on cross examination.

MR. GOLDSTEIN: For the purpose of the record, I desire at this time to object to any conversation he may have had subsequent to the removal of the still from his ranch, upon the ground and for the reason that it is incompetent, irrelevant and immaterial, and not binding upon any other of

the remaining defendants, and not having been done in furtherance of any alleged conspiracy, as charged in the indictment, and being a narrative of past events, and if at all material it would be only as far as the defendant Walter Tooze was concerned, and nobody else. And I make this motion at this time.

MR. HARE: The defendant Tooze does not join in that motion.

Motion denied. Exception saved.

COURT: Is it true this conspiracy continued to the 5th of September, 1930, and the witness is now testifying about events in July, 1930? Is that true?

MR. GOLDSTEIN: Does Your Honor desire to hear us on that?

COURT: No, I have ruled.

MR. GOLDSTEIN: And I have taken my exception, Your Honor. (722-723)

Thereupon, witness testified that Mr. Tooze told him he didn't have to identify the persons that were there. That he could say they weren't dressed exactly the same or didn't look just the same to him, and that if he didn't positively know the men he didn't have to identify them. He was to make such statements in Court if he was a witness. That he told Mr. Tooze that he wouldn't perjure himself for anybody. At the same time he told them to tell the truth; that if he was called as a witness he was to tell the truth; that was after he told him that witness wouldn't perjure himself. Mr.

Tooze told him that he was Mr. Hodgson's lawyer and Hodgson told witness that if he ever got in trouble that he had a good lawyer and it would cost him nothng to get out.

MR. GOLDSTEIN: If the Court please, at this time on behalf of the defendant Joe Brown and other defendants similarly situated I move that the testimony of this witness be stricken out and the jury instructed to disregard it upon the ground that it is incompetent, irrelevant and immaterial and outside the scope of the conspiracy charged in the indictment and at variance thereto in that it relates to a separate, isolated transaction, not connected with the one specific conspiracy charge; and for the further reason that there has been no evidence introduced tending to show the existence of any conspiracy as specifically charged between my defendant and defendants similarly situated and the parties affected by the testimony of this withness; and that therefore the acts and conduct of the parties mentioned by this witness, not in the presence of the other defendants and not in pursuance to the specific conspiracy charge, are in no wise binding upon the defendants now on trial, nor has the witness' testimony any relation to the specific charge mentioned in the conspiracy count in the indictment.

COURT: Motion denied.

MR. GOLDSTEIN: Exception. (728)

Upon cross examination, by Mr. Hare, he testified that Mr. Cameron married his daughter and they all

lived upon the Zielenski ranch. Altogether the men that participated in operating the still were himself, Cameron, Zielenski, Red Hodgson, Richardson and "M". Frank Cameron, a son of Roy Cameron, his son-in-law, was not living at home with them at that time, but he subsequently assisted in helping to operate the still. A few days before Mr. Tooze came, the officers had been there and he had given them statements with respect to the operation of the still. Before Mr. Tooze arrived, he had had some misunderstanding with Zielenski who wanted to throw him off his place. Before Mr. Tooze came, his wife or daughter or one of them wrote a letter to his son about the matter. When Mr. Tooze came they talked about the Zielenski trouble and he thinks that Tooze asked his son to advise them with respect as to whether Zielenski would put him off the place, and that Tooze told him to let him try if he wanted to and to sit tight; that he couldn't take the crop away from him. Witness admitted that he told Mr. Tooze his side of his trouble with Zielenski and that Mr. Tooze advised him what to do, which advice witness appreciated and so told him; that then the matter of the operation of the still was brought up. He don't remember by whom; that Tooze asked him whether they had given statements to the officers and then it was that Tooze told him that they were not obliged to give statements, but that since they did, it was alright that he told the officers the truth; that Tooze told him that if a man was brought up for him to identify and he didn't know him right well, that he didn't have to identify him; that he could say that he didn't look the same or that he wasn't dressed

the same, and that would not be perjury. The question of identification was mentioned after they discussed the pictures which the officers had previously submitted to them. He remembers Tooze telling him not to identify anyone unless he was positive of his identification. It was after this conversation that Mr. Tooze told him to tell the truth. He was not told by the officers that if he would come up and testify against Tooze they would give him immunity. His statement was made to the officers. Mr. Staley and Mr. Means and he signed it after they had written it; that he can hardly read writing.

Upon cross examination by Mr. Goldstein, he testified that at the time the still was operated on his place he didn't come in contact with or have any business transactions with anybody else other than the particular people he mentioned; that he and Cameron made a deal with Zielenski to permit his place to be used for the operation of a still in payment of certain money to be paid him; that at the time of the operation of the still he did not know that any stills had been operated by the people whose names he mentioned any place other than in Crabtree, and that he didn't know that he was entering into a partnership or arrangement for the operation of any stills in Washington, nor did he know that there had been any such stills operated elsewhere; that when they left his place they moved somewhere, but they didn't tell him where they were moving to. That he had nothing to do with the place where they were to move to or have any arrangement with them relative thereto; that outside of that single operation of a still on his

place he had no part in any other liquor violation; that when he first entered into this arrangement he had no knowledge of any prior arrangement with these people that he came in contact with for the operation of stills any place else; that he heard of a man by the name of Joe Brown, but never met him that he knew of nor ever saw him, that he knew of. That he didn't know that he was a partner of his; that he didn't know Wm. Brown, Victor Scholz, George Moffett, Art Hines, Louis Anderson, John Gilliland, LaJesse, Daskalos, Kelly, Peterson, Maras, Alstott, Mooney, Hershey, Hahn, Short, Aperges, Benakis, Barahan, Andreates, Mussorafite or Schatz. That at the time he entered into the arrangement for the operation of the still on his place near Crabtree, he didn't know that a still had been operated by his alleged partner at Rickreall or at Stayton, Marion County, or in Seattle, Washington, or in Mason County, Washington; that this information is news to him; that he did not arrange or agree to conspire or confederate with any of these parties to sell liquor or possess liquor in Oregon and Washington.

WILLIAM WEBB, a witness for the Government, testified that in April, 1930, he was living in Portland, his parents living on the Zielenski ranch near Scio, Oregon. He visited them on June 3rd, 1930, at which time there were there his brother-in-law, Roy Cameron, his wife, his father and mother, together with Frank Cameron, Paul Richardson and Emmons Jelkin. Paul Richardson was operating a still on the Zielenski ranch. There were in the barn besides the still 9 big vats of 50 to 100 gallons capacity, a steam ager, pumps and other

equipment for the manufacture of liquor. The vats contained water and sugar and corn mash. He was there from June 3rd until June 5th. The still was in charge of Emmons Jelkin and the others there were Paul Richardson and Frank Cameron; Paul Richardson was operating. He would test the whiskey as it came out and put it into kegs. While he was there Frank Hodgson or Red Miller came. The liquor that came out of the still was taken away in cars, part of it in a Chrysler Coupe and part of it in an Oldsmobile Coupe and part in a Chevrolet truck. The Oldsmobile had a Washington license and the Chrysler had an Oregon license. The Chrysler Coupe was driven by Rudy Bouthellier. He saw him drive cars away from there about 6 times in the month of June, 1930. He drove the Chrysler Coupe. He hauled the liquor away in kegs. Witness helped him load some of them, also, Frank Cameron and Paul Richardson. Witness went back there on June 20th. There were there Frank Hodgson, Rudy Bouthellier, Paul Richardson, Emmons Jelkin, Frank Cameron and himself. He drove a Ford truck to Portland for Frank Hodgson. When he got to Portland he put the truck in a garage on Stark Street and then he went to the home of some of his friends. He saw Frank Hodgson then rooming at the Morris Hotel, 10th and Stark Streets. He also saw Elsie Hodgson there. He wanted to see Frank about getting the money that had been promised him the night before driving the truck. Frank Hodgson told him he didn't have any money, but that he would call Elsie and see if she had. She went in her room and gave him $7.50. That was the first time he saw Elsie Hodg-

son. He went back to the Zielenski ranch the next evening, going with Rudie Bouthellier. He had previously asked Elsie if he could go down with somebody and she told him that one of the boys would let him ride down with them. He met Rudie Bouthellier in front of the Morris Hotel and they got in a Chrysler Coupe. They also met a Chevrolet coach or sedan driven by Rex Keene. They drove up the Canyon Road and parked their cars about 5 miles out. Rex Keene said he had to deliver some whiskey and when he came back they transferred supplies from the Chevrolet into Rex's car. The supplies transferred consisted of a bunch of gallon jugs. He and Rudie Bouthellier then left Rex Keene and proceeded on to the Zielenski ranch. When they got there Paul Richardson, Frank Cameron, Emmons Jelkin and Frank Hodgson were there. He stayed there about 2 days. Elsie Hodgson came out there during that time and he saw her in the barn where the still was located. While there at the still he saw a Ford coach or sedan there driven by Francis Bouthellier. This was on July 3rd, 1930. He also saw another Oldsmobile Coupe. The first time he became acquainted with Carl Thompson was about the last of June, 1930, at the barn where the still was located. He came in to get a load of liquor for Portland. About the last of June, 1930, he was in the Morris Hotel with Frank Hodgson and another man and he heard them talking about buying another 300 gallon still to put down at the Zielenski ranch with more vats. On the 14th of July, 1930, he was at the Morris Hotel and saw there Elsie Hodgson, Frank Hodgson and Frank Cameron. He had received a letter from his

folks from the Zielenski ranch that they were in trouble and wanted him to come down and help them out. Elsie Hodgson told him that she would get a lawyer to go down with her and clear everything up. He called to see Elsie Hodgson the next morning at the Morris Hotel and she told him that the lawyer couldn't go down with him in the day time, and that they would go down in the evening. While he was there she telephoned to Walter Tooze and after the conversation she said he couldn't go down until 5 o'clock that evening. At that time he and Frank Cameron went back to the Morris Hotel and met Walter Tooze in Elsie Hodgson's room. Elsie introduced Frank Cameron and him to Walter Tooze and said "These are the boys that will go down to the ranch with you". Walter Tooze sent down for the clerk and bought a bottle of liquor and they had a drink around, then they went in his car and they started for the Zielenski ranch. They drove in Walter Tooze's Oakland car. Frank Cameron was driving. On the way out to the ranch Tooze told him that if anyone asked him whose lawyer he was that he was to be the witness's lawyer while he was out there on the ranch, and that witness was to say that he had got him in Portland for his lawyer to find out what trouble the folks were in. When they arrived at the ranch they woke up Roy Cameron and E. L. Webb. He overheard them telling Tooze about the officers being down there raiding the place; that some of the officers had arrested his father and then turned him loose but that if Frank Hodgson came back to the ranch they were to hold him and the officers gave him some money for some shells for a gun with

which to hold him. They also said that the officers had been down there with a lot of pictures, or were going to come down with a lot of pictures for them to identify; that Tooze said that if the officers brought any pictures to be identified that the folks need not tell them if they were the fellows or not; that is, the fellows that were working there on the still; that Tooze said if the officers bring the pictures down he should tell them "Hell, no, that's not the guys", but if they were on the witness stand they couldn't say that, they might think they were a little slimmer or fatter or wear other clothes, then maybe say shaved their mustache, but they couldn't be positive whether it was or was not them. But his father and Roy Cameron both said that if they were on the witness stand they would identify the men that were there, that they were going to tell the truth about everything. When they left the Zielenski ranch, Frank Cameron, Walter Tooze and he returned to Salem, where Mr. Tooze told the clerk of the Senator Hotel to give Frank Cameron and him a room. The next morning they went back to the Morris Hotel, Portland, leaving Tooze at Salem. When they went to Elsie Hodgson's room in the Morris Hotel, the Federal Agents came there about 5 hours later and placed Elsie Hodgson, Frank Cameron, Rudie Bouthellier and himself under arrest.

MR. GOLDSTEIN: At this time, if the Court please, on behalf of the defendant Joe Brown and other defendants similarly situated, I move that the testimony of this witness be stricken out and the jury instructed to disregard it on the ground that it is incompetent, irrelevant and immaterial

and outside the scope of the specific conspiracy charged in the indictment and at variance thereto in that it relates to a separate isolated transaction not related to the one specific conspiracy charge; and for the further reason that there has been no evidence introduced tending to show the existence of the particular conspiracy charged between the defendants and the parties affected by the testimony of this witness; that therefore the acts and conduct of the parties mentioned by the witness, not in the presence of the other defendants and not in pursuance to the specific conspiracy charge are in no ways binding upon the defendants now on trial nor has the witness' testimony any relation to the specific charge mentioned in the conspiracy charge in the indictment.

COURT: Denied.

MR. GOLDSTEIN: Exception. (778)

Upon cross examination by Mr. Stearns, he stated that he testified before the Grand Jury, and that he didn't understand that in so testifying he was immune from prosecution nor was he at any time advised of that fact, although Mr. Tooze told him that if he testified before the Grand Jury he would be immune; that Mr. Tooze also told him that if any officers promised him and the members of his family and the Cameron family immunity from prosecution, that was not worth anything, but if they would go before the Grand Jury or District Attorney Neuner promised them immunity that they would probably get it. The thing that prompted him to go down to Mr. Tooze's to his home and to

seek the services of an attorney was the fact that he received a letter from his folks that told him that they were in trouble; that he burned the letter up. In the letter they merely told him that they were in some sort of trouble and when they were they relied upon him for assistance; that when he received the letter he was flat broke and it was on that account that he went to see Mrs. Hodgson for assistance in securing counsel; that he went there on July 14th, 1930, immediately after receiving and reading the letter, and that he told her that his folks were in trouble and that he was flat broke and he asked her if she would help him in securing counsel and a car to go down and find out what trouble the folks were in; that she told him that she would try and get Mr. Tooze to go down with him and see what the trouble was; that the next morning he came back and Mrs. Hodgson told him that Mr. Tooze was busy, but would try to get away later in the day. She first telephoned Mr. Tooze and then told him that. At about 5 or 5 that evening he was introduced to Mr. Tooze. When they arrived at the ranch, Mr. Tooze was in the front seat riding beside Frank Cameron, the driver; that Frank Camerson wakened his father and witness brought his father, his mother coming later. His folks were very much concerned about Zielenski attempting to put them off the place, and Mr. Tooze told them they had a good thing, just to sit tight and not let him take it away from them because he couldn't do it; that his father and Mr. Cameron told Tooze that they had planted an extensive strawberry crop that represented a great deal of labor and expenditure of money on their part and they did-

n't want to lose it; that was about the first subject that came up. Then there was a general conversation which related to the officers' visit and the fact that a still had been discovered on the place. His father and Mr. Tooze had quite a social visit concerning Kentucky. In the course of the conversation, his mother mentioned the fact that the officers wished them to identify some of these men and she said that she didn't know that she could identify more than 2 and it was in relation to that statement by his mother that Mr. Tooze said that unless they were positive in their identification they ought not to identify them, and that if they believed that they could identify them that they should say that they looked like that person, but if there was any difference in appearance it should be pointed out and he further said that so long as the folks had identified them it was right and proper that they should tell the truth all the way through. At the time Mr. Tooze made his visit he understood that his people and the Camerons had already made signed statements to the officers and it was in relation to this statement that Mr. Tooze advised them respecting the subject of immunity; that while they weren't under any duty to make these statements to the officers but having made them they did the right thing to tell the whole truth, and that if had been in the place of your people and the Camerons he would have done the same thing. He also understood that when Mr. Tooze went there with him that he was going to represent his people and to help them if possible. In the course of the conversation his sister told them that one of these officers, Officer Staley, had tried to get her to

come to Portland with him and he told her he would take her around to the parks and some of the theaters while they were here, whereupon Mr. Tooze told them about some case at Toledo, Oregon, where they had a case over some other girl down there involving Officer Staley; that at the time Mr. Tooze left, his folks thanked him for coming and advising them concerning their rights, and he left his card with Mr. Cameron; that on the way down to Crabtree, Mr. Tooze told them that he had a case to try at Salem, the next day, and he did remain at Salem the next day when he and Frank Cameron came back.

Upon cross examination by Mr. Critchlow, he testified that on the 14th of April, 1930, he was living in Portland, Oregon, and was working for the Bear Creek Logging Company at Sellwood, Oregon. He worked there until the 1st of May; that on June 3rd he went down to his father's and the Cameron ranch near Crabtree, Oregon, remaining there until June 5th; that at that time he saw Paul Richardson, Frank Cameron, Emmons Jelkin, Red Miller and his folks; that while he was there he watched them make liquor. After he left Crabtree on June 5th, he became an inmate of the County Jail in Linn County, where he remained for 16 days and about June 20th or June 21st he returned to his father's ranch. He stayed there for 4 hours. At that time he saw Paul Richardson, Frank Cameron, Emmons Jelkin, Red Miller or Frank Hodgson; that same evening he returned to Portland, driving a Ford truck for Frank Hodgson and he was in Portland for one or two days and on June 24th he left Portland to return to the Zie-

lenski ranch and he stayed there for a day watching the liquor operations and helping load liquor. At that time saw Paul Richardson, Frank Cameron, Emmons Jelkin, Red Miller and Rudolph Bouthellier. Rudolph Bouthellier was hauling liquor in the Chrysler car. They went there together but he left before witness did; that when he returned to Portland he remained about 1 or 2 days, stopping with his friends. Then, about the last of June, 1930, he returned to the ranch with Emmons Jelkin with a truck load of supplies. He stayed there until the next evening. At that time, he saw Elsie Hodgson and some men he didn't know. He helped unload the sugar from the truck that he and Jelkins had brought in. He returned again to the ranch on July 3rd going down in a Ford Coupe or Sedan with Francis Bouthellier. He was there about an hour and a half and came right back. He saw Paul Richardson, Emmons Jelkin, Frank Cameron and Francis Bouthellier. That was the last time he was there before the still was taken away. He never had any arrangements with any of the people he met on the ranch to manufacture liquor or to set up a still or to dispose of part of the product or to help load the liquor for the purpose of transportation, or make any arrangement with any person at the still relative to the manufacture, sale or transportation of liquor.

Upon cross examination by Mr. Goldstein, witness testified that he first saw Frank Hodgson on June 3rd, 1930, and prior to that time he had never known him or any of the defendants in this case or ever come in contact with any of them in any way whatsoever; that on June 3rd, when he went down to his father's place, he

saw a still in operation, but had nothing to do with setting it up or its operation, he being simply a visitor. His being committed to the County Jail in Albany, Linn County, was due to the fact that he was arrested and convicted for the possession of a pint of liquor that one of the men Paul Richardson there had given him as a friendly favor. He never entered into any agreement or arrangement with anyone for the manufacture, possession, transportation, or sale of liquor; that he had never conspired with the defendants to violate the liquor law. In the course of his acquaintance with some of the people whose names he mentioned, he never came in contact with Scholz, Moffett, Hines, Anderson, Gilliland, LaJesse, Daskalos, Kelly, Peterson, Maras, Alstott, Mooney, Hershey, Hahn, Short, Aperges, Benakis, Barahan, Andreates, Mussorafite or Schatz. At the time he became acquainted with Frank Hodgson and Paul Richardson, all he knew about any still in Washington was what he read in the papers; that Frank Hodgson did tell him that he had 7 stills in the States of Oregon and Washington; that at no time after his acquaintance with these people did he ever have any dealings or arrangements with any of them or any of the defendants whose names were mentioned and whom he didn't know to violate the Prohibition Law.

MR. GOLDSTEIN: In view of the testimony I renew the objection I have previously made, on the same grounds, without restating them.

Motion denied. Exception saved. (804)

Upon cross examination by Mr. Helgerson, he stated that the first time he went down to the ranch Frank

Hodgson was there and his father introduced him to him. At that time he went under the name of Red Miller or Frank Miller; that the first time he learned his name was Frank Hodgson was when he was arrested at the Morris Hotel on July 16th, 1930; that he first knew or heard of the name of Hodgson was after the still had been seized and the officers placed his name on a card attached to the still; that he didn't know and don't know yet what his true name is, except that after he was arrested the agents claimed that his name was Hodgson.

Upon re-direct examination, the witness testified that on July 14th or 15th, 1930, when he was up in Elsie Hodgson's room at the Morris Hotel and Red was there; that he knew him as Red Miller or Frank Miller and Elsie by the name of Elsie; that the conversation that he related that occurred on the Zielenski ranch on July 15th, 1930, at which he, his parents, the Camerons and Mr. Tooze were present. The conversation with respect to immunity was after the conversation that the parents had had with Tooze, in which they said they had given their statements to the officers, and that they would not perjure themselves, but that they were going to not identify the people if they could. Up to that time, the witness had not made any statement to any officer in connection with the operations on the Zielenski ranch; that he made a written statement to Mr. Stearns, Mr. Tooze's attorney, on November 15th, 1930, in Mr. Stearns' office in the Yeon Building, Portland, there being present, Mr. Stearns, Mr. Tooze, Mr. Stearns' stenographer and himself. He came there by reason of a letter that Mr.

Tooze wrote him at Coquille, Oregon, wherein he wanted to know, if he, Tooze, would pay his expenses up and back and while he was here, if he would come up; that witness told him "yes" and that money was then sent him to come up here. He was here in Portland from November 12th or 15th until after Christmas. Mr. Tooze paid him his fare both ways and gave him money to live on while he was here for his board and room while was here. He was here about a month. He had lost his job down there by coming up here so Tooze kept him here until he could get another job.

LARS R. BERGSVIK, a witness called by the Government, testified that he was an attorney at Salem, holding the office of U. S. Commissioner thereat; that the defendants, George Moffett, Floyd Ullman, Louis Anderson, Roy Reed and Margaret Taylor appeared before him on October 7th, 1929, for arraignment. The hearing was put over until October 8th, for the purpose of employing counsel. On October 7th, Robin Day appeared for all the defendants. On October 8th, Robin Day and Walter Tooze appeared for the defendants; Robin Day appearing for George Moffett and Margaret Taylor, and Mr. Tooze appearing for Roy Reed, Floyd Ullman, and Louis Anderson, at which time the bonds were fixed. Mr. Tooze requested a reduction of the bond. The preliminary hearing was held on October 16th and 17th, 1929, Mr. Tooze representing Roy Reed and Louis Anderson and Mr. Shelton representing Clyde Ullman. Mr. Shelton was not present on the 8th.

Upon cross examination by Mr. Stearns, he testi-

fied that it is customary for defendants at preliminary hearings to be represented by counsel, that it is a customary practice for counsel to make arrangements for bail bond, and that there was nothing unusual or out of the ordinary in his experience as respecting Mr. Tooze's appearance at that time to represent any of these people; that it was his first experience on having a request made for reduction of bond that he had set. The bond that he had fixed for Mr. Anderson was $3500. Mr. Anderson being the farmer on whose place the still was found.

MR. GOLDSTEIN: If the Court please, in view of the type of testimony given and the extent of it, I, of course, was unable to make any objection as far as my defendant was concerned, until I saw where it led to; and it is so clearly incompetent, irrelevant and immaterial, as far as this particular case is concerned, that I object to it on behalf of my defendant, the other defendants who desire to exercise that same privilege, and move that the testimony be stricken out as incompetent, irrelevant and immaterial, and for the further reason, I submit to the Court, that the employment of attorneys, as far as I have always understood, was in the way of a legitimate purpose.

COURT: It is not necessary to argue it.

MR. GOLDSTEIN: I want to call your attention that there is nothing alleged in the indictment in the matter of employment of an attorney as one of the means used for the furtherance of any alleged conspiracy.

Motion denied. Exception saved. (816)

ALBERT WELTER, a witness called by the Government, testified that he lives on a farm near Stayton, Oregon, that he met a man by the name of Emanuel Wolf in March, 1930, and that he wanted to make arrangements of leasing his barn to set up a still to make liquor. He saw him again on July 6th, 1930, at which time arrangements were made to rent his barn for that purpose. He was accompanied by Frank Hodgson. On July 7th, Frank Hodgson moved the still into the barn, together with staves for the vats and sugar. A day or 2 after that, Paul Richardson set up the vats. It took about a day to complete setting up the vats. It was done by Paul Richardson and Rex Keene. The operation was completed about July 17th. In addition to setting up the vats, they set up a motor, they being Rex Keene, Paul Richardson, Frank Hodgson and Carl Thompson. The motor was to run the cooker. On July 23rd, they made their first run of liquor. It was hauled out by Rex Keene in a Chevrolet Coach with a Washington license. The staves for the vat and the still were brought in a Ford truck and a Chevrolet inclosed delivery car. The Ford truck carried an Oregon license, and the Chevrolet carried a Washington license. The still was in operation until July 26th, running on the 24th, 25th, and 26th. During these days the liquor was hauled out by Rex Keene in a Chevrolet Coach, bearing a Washington license. During the period of time that the still was set up until it was taken away, Rex Keene, Paul Richardson, Frank Hodgson and Frank Hodgson's mother were there. The latter being with Frank Hodgson there

on July 20th, 1930, that being on a Sunday. Witness sells clothing. On that occasion, witness tried to sell Frank Hodgson a suit of clothes. On July 26th, Paul Richardson was there, and that evening the officers came up, they being Staley, Norblad, Backotich and Baker. The officers put him, his wife, Paul Richardson and the rest of his family consisting of 6 boys and 2 girls under arrest. That evening Rex Keene and John Gilliland came to the place and they were placed under arrest. They drove up in a Chevrolet Coach.

MR. GOLDSTEIN: If the Court please, to save time, we make the same objection to the testimony of this witness, and ask that the testimony be stricken out as incompetent, irrelevant and immaterial, along the same lines and upon the same ground and reasons as advanced to the testimony of Mr. Zielenski and those others; along the same line, unless Your Honor desires I repeat it again.

COURT: No, I understand. Motion denied.

Exception saved. (824-825)

Upon cross examination by Mr. Robison, he stated that he had a ranch of 220 acres, of which 85 acres were under cultivation; that the first time he had met Mr. Hodgson was when he was brought to his place by Mr. Wolf who used to farm around Stayton, and to whom he states he sold a suit of clothes. When Mr. Wolf came to him, he offered him $250.00 a month for the use of the barn; that was the first time anybody ever approached him to use his barn to make liquor in. He was in there when the still was in operation, although he did see the ager; that he knew the date of the first run be-

cause Paul Richardson told him. He was in debt $250 a month for the first 2 months and $500 a month after that. He did not help clean up the barn and put in the still. He was taken to jail by the officers and released under a $3500 bond. He made a written statement to the officers. They didn't tell him that if he made it he wouldn't be prosecuted. At the time he made this statement, he expected to be prosecuted, but he does not know why he wasn't.

Upon cross examination by Mr. Goldstein, he stated that he testified before the Grand Jury; that he didn't tell the Grand Jury or any one else that he ever agreed with anybody to operate stills in the State of Washington; that he never agreed with anybody to operate a still in Washington; that he never told the Grand Jury or anyone else that he ever agreed with anyone outside of his connections with the still at his ranch to sell, possess, or transport any liquor in Oregon or elsewhere; that he never did do it. Emanuel Wolf was the medium of introducing Frank Hodgson to him; that he, Frank Hodgson, and Wolf entered into an agreement for the use of the barn. Wolf had no part in the operation of the still outside of his introduction to Hodgson. Outside of the rental of that place by him to Frank Hodgson for the use of his barn, he did not participate in the operation or the still itself, although he knew a still was being operated there and was willing to permit the use of his premises for that purpose for the sake of $250 a month. He never heard of the defendants, Joseph Brown, Wm. Brown, Scholz, Moffett, Hines, Bouthel-ler, Zielenski, LaJesse, Daskalos, Kelly, Peterson, Ma-

ras, Alstott, Mooney, Hershey, Hahn, Short, Aperges, Benakis, Barahan, Andreates, Mussorafite, Frank Bouthellier or B. Schatz. He never agreed with them or any of them to operate any stills in Washington or any other state in the Union. He never agreed with them or any of them to sell, possess, transport or deal in liquor in any part of the United States, his entire connection with the case centering about the use of his ranch for the operation of a still and his contact there being confined to Frank Hodgson, Paul Richardson, Rex Keene, Carl Thompson, Short, Gilliland and none others. At the time he permitted the use of his barn for the operation of a still he did not know that a still had been erected on the Zielenski ranch near Crabtree; that they didn't tell him that; that he was never in partners with Zielenski for the operation of a still on his place, nor did he even know where Zielenski's ranch was. He did not know where the still came from that was on his place. He wasn't told by Frank Hodgson or anyone else that he was a partner in the operation of a still and the manufacture and distribution of liquor; that he would not have joined in such a partnership; that he didn't know he was a partner with Frank Hodgson, nor so charged in the indictment.

MR. GOLDSTEIN: At this time, if the Court please, for the purpose of the record, in view of the nature and extent of his testimony, we renew our motion that this testimony be stricken out, upon the grounds and for the reasons previously stated.

Motion denied. Exception saved. (838)

Upon cross examination by Mr. Helgerson, he

stated that when he met Hodgson on July 6th, 1930, he was introduced by Wolf under the name of Frank Hodgson.

Upon cross examination by Mr. Critchlow, he stated he first met Carl Thompson on July 8th; that the still did not start operating until July 17th; that when he first met Thompson they were setting up the vats. Frank Hodgson introduced Carl Thompson to him, merely calling him "Carl". He didn't know that his name was Thompson until sometime later. He thinks he heard the name mentioned among the boys, Paul Richardson or Rex Keene. Carl Thompson helped put up the vats and connected the motor. He did not see Thompson there during the time the still was in operation. He identified him in the Court Room.

Upon re-direct examination he stated he first made his written statement the second day after his arrest to Officers Cahoon and Murphy.

KENNETH G. LEE, a witness called by the Government, stated that from July 29th, 1929, to December, 1930, he lived in Stayton, Oregon, where he was employed by the Union Oil Company; that on July 15th, 1930, he saw Emanuel Wolf at Stayton, Oregon. Wolf told witness he wanted him to come up to the house; that he had a man who wanted to see the witness on business; that witness went up alone and met a man by the name of Peterson who wanted some gasoline delivered to the Welter ranch, which is about 7 or 8 miles northeast of Stayton, Oregon; that he met Peterson the day after his conversation with Wolf. He thereupon delivered 300 gallons of gasoline in barrels at the

barn. He was paid for the gasoline that night by Peterson. He went out to the Welter ranch again on July 26th or 29th, 1930, and delivered 300 gallons of gasoline, where it was received by the same fellow that was there previously, but it was not Peterson.

C. L. STALEY, a witness called by the Government, Recalled.

Testified that he was a Federal Prohibition Officer and has been such since May 1st, 1928; that he is now located at Missoula, Montana; that he became acquainted with the Zielenski ranch on July 9th, 1930, when in company with Officers Shirley, Burnett and several State Agents; that they went there on the tip that a still was being operated on the ranch. The ranch is between Crabtree and Scio, Oregon; that when they got there they found the still had been moved out, but they found the imprint of 9 large vats and the imprint of a big still on a big cement foundation and back of the barn they found a sump where they had run off the mash and he took a sample of the mash. They also found in front of the barn several 50-gallon gas drums and a pipe line of almost a quarter of a mile long running from the river to the barn to supply water for the operation of the still. The pipe line was to an elevated tank near the barn and from there it was piped into the barn. When they got to the ranch they found the Webb family and the Cameron family. About all that there was there was the pipe line, the mash, and the gas drums; that he did not try to take Nola Webb out to bring her to Portland and take her around to shows; that he took a description of all of the defendants who the people at the ranch

knew had helped operate the still; that he did not place any of the people at the ranch under arrest. He was back again to the Zielenski ranch on July 10th with Federal Investigator Arthur Means. All the Webbs and Camerons, including Roy Cameron, were there. On July 26th, 1930, he went to the Welter ranch, which is about 8 miles from Stayton, Oregon, and found a large still in operation in the barn. He went there with State Agents Dodele, Norblad and Mariat. When they got to within 50 yards they could hear the roar of the burners and smell the odor of fermenting mash. They went to the barn and found Paul Richardson operating a 550-gallon flue-type still. There were 14 burners under the still. They also found a steam ager with one burner under it. There were 10 kegs being aged with water, heat or steam. There was a Whippet Motor attached to a dynamo which gave them electricity to operate their power pumps for pumping mash and water. There were 8 1300-gallon vats upstairs and approximately 3200 gallons of malt and sugar mash. There 290 gallons of whiskey at the time they raided it. They arrested Richardson who was operating the still and there were 2 small Welter boys there. Later that evening, Mr. and Mrs. Welter drove up. Then about 9 o'clock that evening John Gilliland and Rex Keene drove in in a Chevrolet Coach, King County temporary Washington License 125805. They had a load of empty kegs. Gilliland got out and opened the barn door, where the still was operated and they were then placed under arrest. The still is now in the basement of the Custom House, Portland. On July 16th,

1930, he went to Room 327, Morris Hotel, accompanied by Deputy U. S. Marshal Cochran and Federal Agents Shirley and Baker, with warrants of arrest. They arrested there Elsie Hodgson, Rudolph Bouthellier, Wm. Webb, and Emmons Jelkin. About the next day after the arrest they went out to the Zielenski ranch. With respect to the equipment they seized in the Welter ranch, all of the mash vats were destroyed. All of the whiskey was destroyed, except a sample. All of the machinery was brought in and stored in the basement of the custom house. The machinery consists of the Whippet engine, and dynamo, the still itself, 2 electric motors, 2 pumps. On April 15th, 1930, he went to the Wilsonville Ferry between Portland and Broad Acres, Oregon, with Agent Burnett to watch for a load of liquor and shortly after dark they saw a Chrysler Coupe, Oregon License 102201 drive onto the ferry. Shortly afterwards, a Studebaker Sedan with License number 128602 drove onto the same ferry. About a half hour later, the Studebaker came back across the ferry and they followed it but lost it somewhere between the Wilsonville Ferry and Aurora, Oregon; that he is acquainted with the Daskalos ranch, which is about 6 or 7 miles from Canby; that he went there on May 13th, 1930, with several other agents with a search warrant to search the ranch and in the barn they found 7 or 8 500-gallon vats knocked down, a lot of brass fittings, connections, about 500 empty sugar sacks and 2 or 3 empty kegs. He did not see the defendant, Gus Daskalos that day.

MR. GOLDSTEIN: It seems to me that the testimony just given by the witness would be in-

competent, irrelevant and immaterial, unless it shows some connection with any of the defendants in this case. He did not see any defendant there. All it would indicate was that he made a raid there and found some materials there. Unless some connection with this case it seems to me that testimony should be stricken out and I so move upon the ground that it is incompetent, irrelevant and immaterial and not tending to prove any issue set forth in the specific charge of the indictment.

MOTION DENIED. Exception saved. (860-861)

On October 5th, 1929, after he made a raid on the Fulmer ranch, a Republic truck drove in and later a Chevrolet Coach 171009, Oregon License, being driven by George Moffett who was accompanied by Miss Margaret Taylor. He first met the defendant Mussorafite on July 21st or 22nd, 1930. Government's Exhibit 30 was a bill that he saw in Room 327 Morris Hotel, Portland, Oregon, on July 16th, 1930. There were in the room Elsie Hodgson, and Rudolph Bouthellier. On July 21st or 22nd, 1930, he went to Mussorafite's place of business at 1068 Division Street, Portland, with respect thereto. The name of Mussorafite's business is "Super Malt House;" that he and Investigator Means had a conversation with Mussorafite at that time. He handed the bill, being Exhibit 30, to Mr. Mussorafite and asked him if it was one of his bills. He said it was. He also stated the writing thereon was his, and that he knew the man Miller to whom it was made out to; that he didn't know what the item of 152 G11 a deduction of

532 dollars from the bill meant. He stated he couldn't identify Miller. Government's Exhibit 31 being legal papers referring to Oldsmobile Coupe and Government's Exhibit 32 relating to Chrysler 77 were also seen by witness in Room 327 Morris Hotel on July 16th, 1930.

MR. GOLDSTEIN: Before the cross examination begins may I at this time move on behalf of the defendant, Joe Brown, and other defendant similarly situated that the testimony of this witness be stricken out and the jury instructed to disregard it upon the ground that it is incompetent, irrelevant and immaterial and outside of the scope of the conspiracy charged in the indictment, at variance thereto, in that it relates to separate, isolated transaction not connected with the one specific charge; and for the further reason that there has been no evidence introduced tending to show the existence of any conspiracy as specifically charged, between my defendant and defendants similarly situated, and the parties affected by the testimony of this witness and that therefore the acts and conduct of the parties mentioned by this witness not in the presence of other defendants and not in pursuance of the specfic conspiracy charge are not binding in any wise upon the defendants now on trial, nor has the witness' testimony any relation to the specific charge mentioned in the conspiracy county in the indictment.

Motion denied. Exceptoin saved. (870-871)

Upon cross examination by Mr. Robison, he stated

he obtained Government's Exhibit 30 on top of the dresser in Room 327 Morris Hotel. He was there with warrants of arrest for the defendants, Elsie Hodgson and the others apprehended there. Besides picking up Exhibit 30 he also picked up the papers of the Oldsmobile Coupe and the Chrysler Coupe that were lying on top the dresser; that he asked the defendants in the room, Elsie Hodgson, Rudloph Bouthellier, Wm. Webb, and Frank Cameron who the papers belonged to. His attention being called to Exhibit 30 because it was a bill of boot-leg supplies being a bill for sugar, jugs, etc.; that he did not know Gilliland at that time; that he had no search warrant at that time and place and he had a suspicion that these papers had something to do with the liquor raid or conspiracy; that he had permission to take these exhibits that he found there, but Elsie Hodgson, Rudolph Bouthellier, Cameron or Webb did not give him permission. His explanation being that he asked the defendants that were there if these papers were theirs and they all said that it wasn't. He then told them that he was going to take them down to the Custom House, and that if they belonged to any of them they could go down there and get them. The reason he took them was because it looked like evidence. He did not talk with Mussorafite about Walter Tooze. Up to the time he found the bill in Room 327 he had at no time and no place heard of Mussorafite.

JOHN PEASLEE, witness called by the Government, testified that he was employed on May 20th, 1930, by the C. H. Wells Company, Seattle, distributors for the Chevrolet automobiles. He recalls the sale of a

Chevrolet truck on that day to a man by the name of A. B. Stewart.

MR. GOLDSTEIN: Objected to, upon the ground and for the reason there is no evidence of any Stewart in this case, not connected with this case, move it be stricken out as incompetent, irrelevant and immaterial.

MR. ERSKINE: If the Court please, we will show that A. B. Stewart is one of the defendants.

COURT: Very well; on that statement the motion to strike will be denied.

MR. GOLDSTEIN: Exception. (897-898)

That the man came to him and desired the price of a ton and a half Chevrolet truck and wanted to know what they would give him for his old one, whereupon the appraiser was sent out to check the old truck and brought it to the sales manager who put a price on it, which being satisfactory, the witness made out an order. The sales manager he discussed it with was C. A. Bate. Recalled him as dark complexion and that he had a mustache.

MR. GOLDSTEIN: We renew the objection previously made, as to previous testimony.

COURT: Overruled.

MR. GOLDSTEIN: Exception. (899)

Upon cross examination by Mr. Goldstein, the witness was asked if he could identify the person whom he talked with as being in the court room. He stated that he could not identify anybody that there looked like him.

C. A. BATE, a witness called by the Government, stated that he was sales manager for C. H. Wells, Inc., Chevrolet dealers in Seattle, and was so employed on May 20th, 1930; whereupon the following proceeding was had:

Q. Now do you recall a transaction on that date, in which two Chevrolet trucks were involved, and Mr. Peaslee, as the salesman, was involved?

A. Yes, on the month of May, around the 20th of May, or 21st.

Q. What was that transaction?

MR. GOLDSTEIN: We object to it, on the ground it is incompetent, and immaterial, until it is first connected with some of the defendants in this case. I think that ought to be first clearly established, before any testimony is given.

COURT: Counsel stated the party who came there to make the purchase of the car he intended to show was one of the defendants named in this indictment. Of course it ought to be proved. Unless that connection is made, I will strike the testimony of both these witnesses. It cannot prejudice the defendants to show somebody else brought a car.

MR. ERSKINE: The reason I am putting them on out of order, Your Honor, is because these gentlemen have been here from Seattle, all week, and are anxious to get back.

COURT: With that understanding, unless the connection is made, we will strike the testimony of both witnesses. You may proceed.

MR. GOLDSTEIN: Exception. (900-901)

Witness stated Stewart not a large fellow, had a dark mustache and he further stated that A. B. Stewart came into his place of business on May 20th and selected a truck and exchanged it for a 1929 Chevrolet 1½-ton truck, whereupon they took the 1929 truck in part payment for the new truck, which was a Chevrolet 1½-ton.

MR. GOLDSTEIN: First we desire to have the record show our general objection to the materiality of this testimony, along the lines previously stated.

COURT: Overruled.

MR. GOLDSTEIN: Exception. (901-902)

Upon cross examination, witness was asked if he could identify A. B. Stewart in the Court Room and he stated that he could not, but that Stewart was not a large fellow, had a dark mustache.

ARTHUR W. JORDAN, a witness called by the Government, stated that he was office manager for C. H. Wells, Inc., Seattle; that he had charge of its records, they being Chevrolet dealers and has a record of the sale of a truck sold on May 20th, 1930. Witness produced a record, same being an order signed by A. B. Stewart for a Chevrolet truck 1436848.

Q. And what was the consideration on that order?

MR. GOLDSTEIN: Just a moment. The record should show our objection to the materiality and relevancy of this testimony as not being connected with any of the defendants in this case.

COURT: It is admitted, on the understanding that it will be connected, the same as to the former two witnesses, on the sale of this truck. Go ahead. Overruled.

MR. GOLDSTEIN: Exception.

(Question read).

A. There was a used truck turned in, and a contract taken for the balance. (903-904)

The used truck taken in was a 1929 Chevrolet 1½-ton truck, being Motor No. T-996003 and Seriel No. 6 LQ 8251 in addition to the truck there was also turned over a Bill of Sale for the truck covering the Oregon title which was marked Exhibit 33 for identification. The truck that was sold to A. B. Stewart was a 1930 1½-ton truck Motor Number 1436848, Seriel number 6 L" 1799, and the consideration for the purchase of that truck was the truck traded in on account. At the time the truck that was taken in was received it had a 1930 Oregon License on it. Government's Exhibit 33 consisting of 6 sheets were received by C. H. Wells, Chevrolet dealers in Seattle, on May 20th, 1930, from A. B. Stewart.

Q. What is that Exhibit 33 for identification?

MR. GOLDSTEIN: Objected to upon the ground that is not the best evidence. It speaks for itself.

COURT: The exhibit shows for itself.

MR. ERSKINE: All right, we offer in evidence Government's Exhibit 33 for identification.

MR. GOLDSTEIN: Object to it upon two

grounds: First upon the ground it is incompetent, irrelevant and immaterial, as not tending to prove any of the issues in this case; second, upon the ground that this exhibit has not been connected with any of the defendants in this case.

MR. ERSKINE: The Court recalls the witness Nartman, the Chevrolet dealer of Silverton, testified that he sold a Chevrolet truck, Motor No. T 996003, to a man named John Davis, at the time William Brown was present.

COURT: These papers contained in this exhibit were offered to you by A. B. Stewart, or Davis?

A. They were delivered to C. H. Wells, Inc.

COURT: That is what I mean. Overruled, with the understanding this man A. B. Stewart is identified with the defendants.

MR. PAGE: May I have an opportunity to examine this exhibit relating to John Davis? I may be interested in it; before making an objection.

COURT: Very well, you may do so.

MR. PAGE: If the Court please, on behalf of the defendant, William Brown, we object to the introduction of the exhibit as incompetent, irrelevant and immaterial, not tending to prove any of the issues raised in the indictment. I understand—as long as the United States Attorney has referred to the testimony, I would have the same privilege, I think—I understand the testimony was to the effect, the testimony of Mr. Hartman, that a truck was sold by him by a man by the name of John

Davis, through his salesman William Brown. I anticipate the commission was paid at that time. Now what Davis may have done with the truck thereafter is not binding upon any of the defendants here; nothing in the testimony to show that John Davis is a defendant, not been recognized by anyone here. As a matter of fact he is not a defendant in this case, or one of the so-called conspirators.

COURT: Objection overruled.

MR. PAGE: Save an exception.

MR. ERSKINE: We will further show that John Davis is one of the defendants too.

COURT: It will be admitted, with the understanding that A. B. Stewart is shown to be one of the defendants.

MR. ERSKINE: That is the understanding.

Received and marked GOVERNMENT'S EXHIBIT 33.

MR. ERSKINE: I reserve the right to refer to this exhibit in the argument.

MR. GOLDSTEIN: If the Court please, we desire our general objection to this testimony, as incompetent, irrelevant and immaterial, on the ground it is not within the scope of the indictment, and has no relationship to it.

COURT: Objection overruled.

MR. GOLDSTEIN: Exception. (905-907)

MR. BATE being recalled for further examination, testified that defendant William Brown's Exhibit "F" being a copy of the contract signed by A. B. Stewart for

the purchase of the truck was signed by the man known to him as A. B. Stewart in his presence, he being the man to whom the truck was delivered, and that the witness's name likewise appears on said Exhibit being signed by him at the same time.

MR. GOLDSTEIN: If the Court please, I think the record ought to show an additional objection to this testimony, upon the ground that the Davis referred to by Mr. Hartman, has not been shown to have any connection with Mr. Stewart, who subsequently acquired the car, and which Mr. Stewart subsequently traded in to the people up in Seattle. In other words, whatever has been done after the car parted from Davis, even though it may have been with the assistance of William Brown, would not have any binding effect upon Mr. Brown if Mr. Davis subsequently parted with that car to Mr. Stewart, whoever he may be, and Stewart subsequently traded in this truck for some other truck; and the record should show our objection to all this testimony, without this connection being shown.

COURT: Overruled.

MR. GOLDSTEIN: Exception. (911)

MR. ERSKINE: We don't claim that Davis and Stewart are the same people, Your Honor.

MR. GOLDSTEIN: That being the case, we renew the objection.

COURT: Same ruling.

MR. GOLDSTEIN: Exception. (912)

CARL D. GABRIELSON, a witness called by the

Government, testified that he is a Deputy Secretary of State, in charge of registration of motor vehicles; that he has the registration of Republic truck, Motor Number 12805 B, the Oregon license number for 1928 being 93024 and for 1929 being 81012. His record discloses the first ownership of this Republic truck being in the name of George Moffett as of July 3rd, 1928, showing in the application that it was purchased from the Republic Truck Sales Corporation on June 30th, 1928, and that the record shows the present ownership still in the name of George Moffett; that no license was issued for that truck in Oregon since 1929; that he also has the record of ownership and license of Chevrolet truck, Motor No. T 996003, showing the original ownership in the name of John Davis, as having been purchased from Earl Hartman Company, Silverton, on August 1st, 1929, and that the record still stands in the name of John Davis, the 1929 license for said truck being 96260 and for the first 6 months of 1930, being license No. 188565. The application for license was signed by John Davis, care Lydia Keene, Rt. 1, Brooks, Oregon. The application for the 1930 license was signed by John Davis, Rt. 1, Brooks, Oregon, which is 8 miles north of Salem, Marion County. Both the application for the 1929 license and the 1930 license bear the signature of John Davis. The license for 1930, according to his records, show its delivery to the address given on the application.

Q. Now I hand you Government's Exhibit 34, for identification, Mr. Gabrielson, consisting of four sheets, and ask you if those are the records

concerning the Chevrolet truck, motor No. T 996,-003?

MR. PAGE: Just a moment. Objected to as incompetent, irrelevant and immaterial. The records speak for themselves.

COURT: Overruled.

MR. PAGE: Exception.

A. Yes.

MR. ERSKINE: We offer this exhibit in evidence.

MR. PAGE: Objected to as incompetent, irrelevant and immaterial, not tending to prove any of the issues of this case; for the further reason that the signature of the man John Davis herein, is not shown to be that of the John Davis to whom the truck was sold, or with whom the defendant William Brown had any negotiations, or any dealings of any kind; not binding upon this defendant, or any of the defendants involved.

COURT: Overruled.

MR. PAGE: Exception.

COURT: It may be received under the ruling of the Court that if connection is not made it will be stricken from the record. The evidence shows that a man by the name of Stewart negotiated up in Seattle for the purchase of this car. Now if Stewart is identified as being one of these defendants, the exhibit will be admitted. He delivered certain papers there in connection with the sale of a new truck. (916-18)

That he has Oregon record of Ford touring car, Motor No. A 2638866, showing the legal certificate of title to be issued to Walter Wallace; that it was purchased from Newberg Motor Car Company, Newberg, Oregon, on March 3rd, 1930, the 1929 license number being 314806, and the first 6 months of 1930 being 211806; that he also has the record of transfer of ownership from Walter Wallace to the Blackwell Motor Car Company who re-sold it to Morris Hess; said records being Government's Exhibit 35 for identification.

MR. ERSKINE: I offer in evidence Government's Exhibit 35 for identification.

MR. GOLDSTEIN: On behalf of the defendant Joe Brown and other defendants similarly situated, we object on the ground of incompetent, irrelevant and immaterial and not binding upon any defendant in this case, and not the best evidence, purely hearsay and self-serving and not properly identified.

Objection overruled. Exception saved.

Marked Government's Exhibit 35.

MR. ERSKINE: This application for certificate of title address Newberg, Oregon, March 3, 1930, and signed by Walter Wallace and gives his address as 40 North Third Street, Portland, Oregon. The remainder of the exhibit I desire to use at the time of the argument.

MR. GOLDSTEIN: May I inquire of the prosecuting attorney whether he proposes to show Wallace is one of the defendants in this case?

MR. ERSKINE: I propose to show that at the time of the purchase of this car by Walter Wallace one of the defendants was present and furnished the money for the purchase of the car. (920-921)

He also has a record of Oakland Coupe, 1929, License No. 270057, showing the ownership in Walter L. Tooze, Jr., he having purchased the car from Collins Bros. Company on November 4th, 1929, and that it was transferred by Mr. Tooze on December 16th, 1930, to F. G. Scherer, the address given in the application for the 1929 license being 606 Failing Building, Portland, Oregon; that he also has a record of Rickenbacker, Motor No. 28575, showing 1929 license 1055006 and the first 6 months of 1930 license No. 189763, the record of ownership showing that on January 21st, 1928, it was in the name of Margaret L. Ackley, and that it was transferred by her to G. Tringas on January 19th, 1929, with the address given at the time of transfer as 5133 E. 68th Street S. E., Portland, Oregon, and the time the transfer from Z. Tringas on April 25th, 1929 to Geraldine C. Brown. The address given for her being 5133-68th Street, S. E., Portland. The legal owner at the time being Z. Tringas, and the address being Route 1, Hubbard, Oregon. The records further show transfer of title of this car from Geraldine C. Brown to Walter L. Tooze, Jr., on May 7th, 1929, the address for Mr. Tooze being 606 Failing Building, Portland. The record further shows the transfer of Mr. Tooze to Wm. G. Hayes on June 1st, 1929, the address for Mr. Hayes being Gen. Delivery, Dallas, Oregon; the certificate of

title being mailed to the legal owner, Lee V. Crane. The receipt of registration to Mr. Hayes after the transfer to him on June 21st, 1929, was mailed to Gen. Delivery, Dallas, Oregon, but was returned, unclaimed to this office.

MR. ERSKINE: We offer in evidence Government's Exhibit 36 for identification.

MR. GOLDSTEIN: Object to it for the reason and upon the ground that there has been no evidence tending to connect this testimony with any of the objects set forth in the conspiracy count of the indictment, that it is not the best evidence and has not been properly identified as to the makers of these various documents; are not connected with any of the defendants in this case.

COURT: Of course it will have to be shown why this relates to some of the defendants, some connection.

Objection overruled. Exception saved.

MR. ERSKINE: It is already in about this car being at the various places during the time of the conspiracy.

COURT: I understand that, but I say that the record must have some connection with the defendants and the alleged operations. If you have shown it, all right.

MR. STEARNS: If Your Honor please, with respect to this Rickenbacker car I want to call your attention to the fact that there is no evidence at all that that car was in any way used in connection

with any illicit traffic until along in September, 1929. This car was transferred out of Mr. Tooze's name on the 21st day of June, 1929, months before there was any claim on the Government's part that it was in any way connected with any of these alleged liquor transactions. I desire to call your attention to that because it is the state of the record and there is no claim and can be no claim that it was so used while it was in Mr. Tooze's name.

MR. RYAN: I would like to join in that on behalf of the defendant Zenaphon Tringas or William Brown. As the record shows it was transferred out of his hands the 19th of January, 1929, some eleven months before any claim upon the part of the Government it was used in any illicit operation.

MR. STEARNS: And for the reasons I have stated, on behalf of the defendant, Mr. Tooze, I object to the introduction of this record in evidence as incompetent, irrelevant and immaterial.

COURT: Might be some question as to those defendants out of whose names the car was transferred before it is claimed here it was used in connection with the alleged conspiracy; as to those particular defendants.

MR. ERSKINE: I don't understand, Your Honor, that we are bound by the use of this car at any particular time or to any particular defendant; if we can tie in during the period of this conspiracy with any of these defendants in reference to the car, it is admissible.

Objection overruled. Exception saved.

Marked Government's Exhibit 36. (925-926)

He also has the records of Chevrolet Coach No. 78400, the 1929 license being 171009; it did not have a 1930 sticker, but he has a record of the 1931 license number. The 1929 license was applied for by Art D. Hines, the address being given as 521 Washington Street, Portland, Oregon. The application for the 1931 license was made by Kay Tye. The original certificate of title issued to Art Hines shows that it was purchased from the Grout Chevrolet Company on January 24th, 1929. The records show it was transferred from Art Hines through the Blackwell Motor Car Company to Kay Tye on July 22nd, 1930. He also has the records of the Hudson Sedan, Motor Number 38027 with the 1929 license, 137193, issued to Wm. A. Blatch at 1136 E. 23rd Street N., Portland, Oregon. The 1930 sticker number was 107603 issued to Andrew Dilas, 408 E. Main Street, Portland. The 1931 license plate was No. 236307, issued to Helen Daskalos at 352 Vancouver Avenue, Portland. The transfer was made from Blatch to Dilas on February 5th, 1930, and from Dilas to Helen Daskalos on July 19th, 1930, who is now the present owner.

MR. RYAN: If the Court please, I apprehend this is an attempt to connect Gus Daskalos with that car by the name of Helen Daskalos, who is not one of the defendants and we respectfully move that the testimony be stricken.

Motion denied. Exception saved. (928)

He also has a record of a Chrysler Coupe, Motor

No. 203157, the 1929 license being 102201, and the 1930 license being 104558, and the 1931 license being 278333. The record of ownership shows the first owner to be J. E. Solomon, having purchased it from the Chase Garfield Motor Car Company on November 22nd, 1928; that it was transferred by Solomon to Arthur Collins on July 22nd, 1929, and transferred by Collins to Charles A. Moore on January 6th, 1930, and the certificate was assigned by Collins to the Chase Garfield Motor Car Company on August 21st, 1930, and the car was resold to R. M. Schmeer and title issued in his name on August 25th, 1930. The address of Moore was given as 40 N. 3rd Street, Portland; that he also has record of Chrysler Coupe, Motor No. 13251. The original certificate of title being issued to Elsie I. Sherman who purchased it from the Chase Garfield Motor Car Company on May 22nd, 1930, the present ownership being in the name of John L. Stark. The application for the first license was made by Elsie I. Sherman, with address at Morris Hotel, Portland, Oregon; that Government's Exhibit 37 are the records of Secretary of State concerning the Chrysler Coupe, Motor No. W 13251.

MR. ERSKINE: I offer it in evidence.

MR. GOLDSTEIN: I desire the record to show objection to that for the same reason as advanced to the prior exhibits, sought to be introduced by this witness.

Objection overruled. Exception saved. (931)

The 1931 license plates run from July 1st, 1930 to June 30th, 1931 and the 1929 license plates would run

from January 1st, 1929, to June 30th, 1930, providing a 6 months 1930 license was purchased which would be the sticker he was testifying about.

MR. GOLDSTEIN: If the Court please, on behalf of the defendant, Joe Brown, and other defendants similarly situated, we move that all the testimony of this witness be stricken out, together with the exhibits introduced through this witness, and the jury instructed to disregard the same on the following grounds: First, that this testimony is not the best evidence, is hearsay, self-serving and has not been properly identified; second, that this testimony has not been connected with any of the defendants in this case; third, that this testimony bears no relation to any of the charges brought in the indictment; fourth, that as far as count one of the indictment is concerned it bears no relation to the objects of the conspiracy as charged therein; fifth, that no evidence of the conspiracy as charged has been introduced or attempted to be proven so as to make it applicable, if at all, to the defendants on trial.

Motion denied. Exception saved. (932)

PATRICK BACON, a witness called by the Government, testified that he was the district manager of the Pacific Telephone and Telegraph Company, Portland, and was so employed between December 5th, 1929, and May 9th, 1930; that he has the records showing the telephone service at an address at 5133-68th Street, S. E., Portland, Oregon, and the records show a telephone was there at that address between December 5th,

1929, and April 9th, 1930, in the name of Earl Trowbridge; an application therefor being made by a party who gave such name and reference of a business address at 6143 Foster Road. The telephone number being Su. 2724.

CARL GABRIELSON, Re-called—Testified that he had a record of a Ford Coupe, Motor number A 882712, the record of ownership showing that it was purchased from the Valley Motor Company, Salem, Oregon, on March 11th, 1929, the first owner being Roy Reed, who made application for the license on March 11th, 1929, the first owner being Roy Reed who made application for the license on March 12th, 1929, giving his address as care of George Moffett, Salem, Oregon.

MR. GOLDSTEIN: May the record show the same motion I made at the close of his testimony in chief on the same ground as previously urged?

Motion overruled. Exception saved. (940)

C. P. MILNE, a witness called by the Government, testified that he was the credit manager of the Portland General Electric Company and was so employed from September 18th, 1929, to June, 1930, and that he has a record of electric service sold by that company to an address at 5133-68th Street, S. E., the application for that service from September 18th, 1929, being signed by Earl Dawes.

MR. GOLDSTEIN: I object to that unless some connection with any of the defendants in this case. I never heard of a Dawes unless it is the vice-president.

Objection overruled. Exception saved. (941)

MRS. MARY ASTLEY, a witness called by the Government, testified that she was employed by the LaFrance Republic Sales as stenographer and bookkeeper and has charge of the records; that she has in her possession the record of Republic truck Motor number 12805 B, the record showing the sale of that truck on June 30th, 1928.

R. U. JAMIESON, a witness called by the Government, testified he was office manager in the employ of the Republic truck organization during 1928; that he has the record of the sale of a Republic truck, motor number 12805 B, and that he made the sale himself.

MR. ERSKINE: We offer in evidence Government's Exhibit 39 for identification.

MR. GOLDSTEIN: On behalf of the defendant Joe Brown we object to the introduction upon the ground it is incompetent, irrelevant and immaterial, not binding upon him or any of the defendants similarly affected for the various reasons previously stated with respect to other exhibits concerning automobiles.

COURT: I haven't seen the record. Is the truck number already in the evidence?

MR. ERSKINE: Yes.

Objection overruled. Exception saved.

Marked Government's Exhibit 39. (946-947)

F. E. DODELE, Re-called—Testified that he went to the Zielenski ranch, Linn County, Oregon, on July 9th, 1930, with Federal Agents Staley and Shirley, and

State Agent Bore. When they got there they found a still had been moved out of the barn and there was a strong odor of mash and some mash too. A gallon thereof was taken as evidence and there was an imprint of 9 large vats in the barn and electric light wiring around the barn and a place where the still had set. While they were there they questioned the people on the ranch. He also was over at the Welter ranch, Marion County, Oregon, on July 26th, 1930, and they took a 650-gallon still there. He went there with Federal Agent Staley and State Agents Baskovitch and Norblad and Federal Agent Baker. When they went to the barn they arrested Paul Richardson, who was running the still and a little later Mr. and Mrs. Welter came in and they were arrested and later in the evening Rex Keene and a fellow giving the name of Goodman came in a Chevrolet Coach loaded with empty kegs. The Chevrolet Coach had a King County, Washington temporary license. At the time they were at the Zielenski ranch they put nobody under arrest. At the time they were at the Welter ranch they arrested Paul Richardson, Welter, Rex Keene and the fellow who gave the name of Goodman.

Q. What did you find out there?

MR. GOLDSTEIN: We object to that upon the ground and for the reason that it is apparent from the testimony of this witness that these acts were done subsequent to the termination of the operation of the last still as it has thus far been developed by the testimony, and this would be merely a narrative of past evidence, as far as the

particular people with whom he came in contact were concerned, and could not by any rule of evidence be considered as having any effect or relationship to any other of the defendants on trial, and any mention of these defendants at that particular place that he is now testifying to—he is now testifying to an arrest he made and what he found there and I think at this particular time we object as incompetent, irrelevant and immaterial, on behalf of the defendant Joe Brown and other defendants similarly situated; it ought not to be considered by the jury with respect to them.

MR. ERSKINE: He is permitted to testify to anything that happened there incident to the arrest.

Objection overruled. Exception saved. (950-951)

At the Welter ranch, they found a 650-gallon still about 3,000 gallons of mash, about 200 gallons of whiskey, 9 large vats, a Whippet automobile engine, dynamo and pumps, electric power and mash pumps. The Whippet automobile engine was sitting about 10 or 15 feet from the still in the lower part of the barn. It was floored back and the still set down on the ground about 4½ to 5 feet below the level of the floor he saw Chevrolet truck, license 96260 many times. After the time of his visit to the Fulmer ranch concerning which he had already testified he followed this truck on December 31st, 1929, at which time he, with Federal Agent Burnett were watching Mickey's garage at 6143 Foster Road. They followed this Chevrolet truck, Oregon

license 96260 to the Peerless Garage, where the driver, the man he knew as Mickey, was driving the truck to a cooperage at 467 N. 20th Street, Portland. Mickey's name is Trowbridge, though he is not sure about it. He followed the truck from the Peerless Garage to 467 N. 20th Street where he loaded a lot of 10-gallon kegs into the truck, then went back to Mickey's garage. He followed this truck again on January 10th, 1930, from 467 N. 20th Street, which is the place of the Pacific Cooperage Company with a load of kegs to Mickey's garage; that same night he followed it to a house about 3 or 4 blocks from there. Mickey was driving the truck. From there he went to Bill Brown's place near Broadacres. Federal Agent Burnett was with him. This was on January 10th, 1930.

MR. GOLDSTEIN: At this time on behalf of the defendant Joe Brown and other defendants similarly situated we move that the testimony be stricken out on the following grounds: first, that the testimony of acts done by some of the defendants were subsequent to the termination of the alleged conspiracy and therefore not binding upon the other defendants; second, that the testimony is outside the scope of the conspiracy charge.

Motion denied. Exception saved. (955)

N. P. BURNETT, a witness called by the Government, testified he had been a Federal Prohibition Officer for about 13 years and was working as such agent out of the Portland office between September, 1927 and September 15th, 1930. He was out at the Fulmer ranch about 6 miles from Salem on October 5th, 1929,

being with Mr. Staley, Mr. Dodele, Mr. Zimmerman and Mr. Mariat. He was out there sometime prior to December 5th, 1929. He saw Chevrolet car, License 96260 lots of times. He saw it on December 31st, 1929. He and Mr. Dodele followed the truck from Mickey's garage on 61st and Foster Road to 467 N. 20th Street, which is a cooperage place where they manufacture barrels and they saw the truck load with 10-gallon kegs. He couldn't say who was driving the truck. After it was loaded they followed it back as far as Mickey's garage and there it was driven into the garage. Mr. Dodele and he then went up the highway as far as Aurora, but they didn't see the truck any more that night. They saw the truck again on January 10th, 1930, and they trailed it from Mickey's garage to 467 N. 20th Street, where it was again loaded with 10-gallon kegs. They followed it back to Mickey's garage, a man got out and went into the house or in the garage, stayed there a short time, than drove to 5133-68th Street, S. E., where he got out and went into the house and talked to someone in the house for about an hour, then he came out and got in the truck and drove it toward 82nd Street, where they lost contact with the truck. They then drove on to some place near Aurora to a place called New Era, where they met the truck coming back the highway. They followed the truck until it got to Hubbard. Then they lost track of the truck so they drove out past Broadacres. A little snow was on the ground that night. They passed Bill Brown's place. Just as they got opposite the gate they saw fresh truck tracks going into Brown's place. They didn't see the truck.

MR. PAGE: If the Court please, unless it be identified that these truck tracks were of this particular truck, I move that the testimony of this witness with respect to these tracks going into Bill Brown's place be stricken.

Motion overruled. Exception saved. (962)

That he was out to the Zielenski ranch on July 9th, 1930, with Agents Staley, Shirley, Dodele and State Agent Bore. They made no arrest while out there. They were searching around the barn. He was not at the Welter ranch.

MR. GOLDSTEIN: On behalf of the defendant Joe Brown and other defendants similarly situated I move that the testimony of this witness be stricken out and the jury instructed to disregard it upon the ground that it is incompetent, irrelevant and immaterial, and outside of the scope of the conspiracy charged in the indictment and at variance thereto in that it relates to separate and isolated transactions and not within the scope of the conspiracy charged. And for the further reason that there is no evidence introduced tending to show the existence of a conspiracy as specifically charged between my defendants and other defendants similarly situated and the parties, if any, testified to by this witness, and that therefore the acts and conduct of the parties mentioned by this witness, of any person other than the defendants are not pursuant to the scope of the conspiracy charge and in no wise binding upon those now on trial, nor has the witness' testimony and relation to the spe-

cific charge mentioned in the conspiracy charged of the indictment.

Motion denied. Exception saved. (963-964)

Upon cross examination by Mr. Goldstein, he stated that whoever it was that was driving the truck he don't know and don't claim to know who was driving it.

Upon cross examination by Mr. Page, he stated that with respect to the fresh truck tracks leading into the Wm. Brown place, he couldn't say what truck made them or anything about it. That he made no investigation; that he didn't see the truck there nor did he see the defendant Wm. Brown there; that it was about 11:00 o'clock at night that he went by the Brown place.

CHARLES G. BAKER, a witness called by the Government, testified that he was a Federal Prohibition Agent and began such employment on April 18th, 2 years ago; that he was out to the Zielenski ranch with Mr. Staley; that he was out to the Welter ranch East of Stayton, Oregon, about July 26th, 1930.

Q. What did you find when you got out there?

MR. GOLDSTEIN: Objected to as incompetent, irrelevant and immaterial, upon the grounds previously stated.

COURT: What date was it?

A. July 26, 1930.

COURT: When was the last arrest made of the defendants here on trial? As I understand it, the alleged conspiracy ended the date of their arrest. Were they arrested at different times, and on different dates. I understand the rule to be that

when the arrest is made, the conspiracy terminates on the date of the arrest. If some were arrested at one time, and some arrested at another time, the date of the first arrest would not be applicable to the ones later arrested. That is my view of the law as to when a conspiracy terminates.

MR. ERSKINE: Arrests were made at that time, Your Honor, at the Welter ranch—July 26th.

COURT: Were all these defendants on trial arrested at that time?

MR. ERSKINE: No, sir.

MR. GOLDSTEIN: As a matter of fact, a number of the defendants had been arrested prior to that time. That is the reason why this is nothing more than a narrative of a past event that could be binding, if at all, only upon the particular parties there.

COURT: Yes. I say, any evidence relating to defendants after the date they were arrested, would not be applicable to them. Were there two different occasions when arrests were made?

MR. ERSKINE: Several.

COURT: When was the last date—July 26th?

MR. GOLDSTEIN: No, there were some arrested late in October. They could not locate them. I disagree a little with Your Honor. I believe Your Honor is deceived in the statement—as soon as the arrest is made that of course ends the conspiracy—but in addition to that the termination

of the conspiracy is, by the success or failure of it, even prior to that time. They may have quit.

COURT: We will argue that question later on. Let us get down to the proposition of law here.

MR. ERSKINE: Your Honor, as far as some of the defendants in this case are concerned, there were many of them that were arrested after the return of the indictment. Some were arrested on September 15th. Those that were arrested on July 26th, the conspiracy would terminate as to them on that date; and some who were arrested prior to that time, it would terminate as to them. But that date would not be applicable to those who were arrested later. That is my view of it. This testimony I am trying to elicit right now would be incident to the arrest.

COURT: Very well. Overruled.

MR. GOLDSTEIN: Exception. (982-983)

He stated they found a 650-gallon still in operation, a 50-gallon aging plant, with 10 10-gallon kegs of whiskey aging and there were 9 1300-gallon mash vats there, and 3200 gallons of mash. The plant was equipped electrically. Pumps were run by a Whippet automobile engine. The number being 96-255520. Paul Richardson was there at the place when they got there and Rex Keene and John Gilliland drove in later and Mr. and Mrs. Welter came in at various times.

MR. GOLDSTEIN: If the Court please, at this time, on behalf of the defendant Joe Brown, and other defendants similarly situated, I move

that this testimony be stricken out, and the jury instructed to disregard it, first, upon the ground of no evidence having been introduced tending to show the specific conspiracy charged in the indictment, the acts and conduct of some of the defendants would not be binding or have any effect upon the defendant Joe Brown and other defendants similarly situated; second, upon the ground that even assuming that such evidence of a conspiracy had been introduced, the acts and conduct of the parties mentioned by this witness, were subsequent to the consummation of the alleged conspiracy, and would not be binding or have any effect upon the defendant Joe Brown, and other similarly situated.

COURT: Overruled.

MR. GOLDSTEIN: Exception. (986)

PHILLIP A. MULLEN, a witness called by the Government, testified that he was employed by the Oldsmobile Company of Oregon at Broadway and Couch Streets, Portland, and was so employed on December 10th, 1929. He made a sale of an old Olds Coupe to a man by the name of A. B. Swanson.

Q. What address did he give?

MR. GOLDSTEIN: Objected to upon the ground and for the reason that there is no evidence in this case of any Swanson connected with any of the defendants; purely outside the issue.

COURT: Overruled.

MR. GOLDSTEIN: Exception. (991)

The address given being 562 E. Pine Street. He saw the car again on July 31st, 1930, at which time it bore a Washington license No. 264553.

COURT: Do you object to it?

MR. GOLDSTEIN: Yes, I object to it, as subsequent to any transaction in this case. I think, if Your Honor will recollect—and that is the point I am going to make—that after the seizure of the still at the Welter ranch there were no further alleged violations said to have taken place.

COURT: That was on July 26th.

MR. GOLDSTEIN: That was on July 26th —even though they may say in the indictment it continued until September. The point I make is, that with the arrest and seizure of that still, the conspiracy, if there was a conspiracy, ended.

MR. ERSKINE: We will show Swanson, one of the defendants—connect him.

COURT: You can introduce evidence up to the date of the conspiracy alleged in the indictment, September 15, 1930. What I intended a moment ago was that where certain parties were arrested prior to that time then the evidence subsequent to their arrest, unless there is testimony that they continued to function and did something in carrying out the conspiracy, would not apply to these particular defendants. But it does apply to those defendants up until the time they were arrested, up until the last date in the indictment, which is September 15th. That is my understanding. I

can't strike the evidence because it relates to some of the defendants.

MR. GOLDSTEIN: He just made the statement—I don't think he would be justified in making it, but he did make it in the presence of the jury, that he intended to connect Swanson up as Frank Hodgson, who has not been arrested or apprehended.

MR. ERSKINE: I did not say Frank Hodgson.

MR. GOLDSTEIN: He is not apprehended, and therefore he is not on trial. That testimony if binding at all would only be binding upon that man who is not apprehended, and who is not on trial. now here we have a number of defendants on trial.

COURT: Does the record show that any of the defendants now on trial were arrested subsequent to July 25th, 1930?

MR. STEARNS: I don't remember.

COURT: I am receiving this evidence up to the last date of the indictment, relating to those defendants who had not been arrested. After they were arrested, unless there is some evidence shown that they went on and carried out the conspiracy, it would not apply to them.

MR. GOLDSTEIN: But this testimony would be only binding or have any effect, upon a man who is not on trial.

COURT: Was July 26th, the last date of the arrest of any of the defendants now on trial? I will limit to the defendants on trial.

MR. ERSKINE: No, Your Honor, I know there were a lot of them arrested after that date. As a matter of fact the indictment was not returned until the 20th day of September, 1930, and as late as three or four months after that date some of the defendants now on trial were arrested.

MR. GOLDSTEIN: You don't expect to prove anything subsequent to the indictment, do you?

MR. ERSKINE: No.

COURT: I think I will clarify this by stating to the jury at this time—gentlemen of the jury, you will understand that any evidence received in this case subsequent to the time any of these defendants have been arrested, does not apply to the defendant arrested at that time, but would apply to the defendants on trial, until the arrest was made. The last date alleged in the indictment, when the conspiracy ended, was September 15th, 1930. Any evidence after that time would not bind these defendants. And you understand that the date of the arrest terminates the conspiracy as to the particular defendant arrested. It seems there were arrests made of certain defendants on different dates—unless they continued by some affirmative deed, something to continue and carry on the conspiracy. Now I think I will limit it to that. Go ahead.

MR. GOLDSTEIN: May we have an exception, Your Honor? (992-995)

That the next time he saw the car after he sold it to A. B. Swanson was on July 31st, 1930, when it was brought on his floor, bearing Washington license No. 264353 for the year 1930.

Upon cross examination, Mr. Mullen stated he did not recognize A. B. Swanson in the Court Room.

MR. GOLDSTEIN: I renew the objection, on the grounds previously stated—this testimony is immaterial and not binding upon the defendants on trial.

COURT: Mr. Swanson is referred to as one of the defendants.

MR. ERSKINE: He is not one of the defendants on trial.

COURT: Objection overruled. Exception. (996)

MISS MYRTLE SMALLEY, a witness called by the Government, testified she was formerly employed as office manager of the Billingsley Motor Car Company and has charge of the records, and has the record of a sale of a Whippet Motor, No. 96-255520, showing the date of its sale on April 20th, 1929, to Art Hines at 149 Lownsdale Street.

MR. GOLDSTEIN: If the Court please, we desire to have the record show our general motion that the testimony be stricken, upon the ground that it has no relevancy to the specific charge in the indictment, is not in furtherance thereof, and no evidence tending to show the specific conspiracy as charged.

COURT: Denied.

MR. GOLDSTEIN: Exception. (997-998)

ALEX PAGE, a witness called by the Government, testified that he was chief deputy sheriff, Wahkiakum County, at Kathlamet, Washington, and held such position on May 10th, 1930, on which date he saw the defendant Wilford LaJesse.

MR. GOLDSTEIN: Objected to on the ground and for the reason there is nothing in this charge that places LaJesse in Cathlamet, Wahkiakum County, Washington. There is nothing in the indictment that affects that county at all.

MR. ERSKINE: Now if the Court please, that is true, as far as Cathlamet, Washington, is concerned. I do not desire to elicit from the testimony of this witness any testimony concerning any violations that LaJesse did. The only purpose for this witness is to testify as to a conversation he had then at that time with the defendant LaJesse.

COURT: Overruled.

MR. GOLDSTEIN: Exception. Did you fix the date?

MR. ERSKINE: May 10, 1930.

MR. STEARNS: I assume this conversation is in furtherance of the conspiracy. Otherwise it would be mere hearsay, and not binding on the defendants.

COURT: Well I don't know what it is. We will see what it is. (999-1000)

On that date he heard a conversation between Wil-

ford LaJesse and himself and Mr. Regan of the Prohibition Department from Seattle.

Q. What part of that conversation did you hear?

MR. GOLDSTEIN: I would like to have the record show that on behalf of the defendant, Joe Brown, and others similarly situated, any conversation he might have had with the defendant LaJesse would only be binding upon the defendant LaJesse, and would have no relevancy, or have any effect, or any relationship to any of the other defendants in this case, it being purely a narrative of a past event, unless it were done in furtherance of an alleged conspiracy. I understand from the prosecution it is claimed to be purely an admission against interest, if it amounts to that much.

COURT: Objection overruled. He didn't say it was not in furtherance of the conspiracy.

MR. ERSKINE: I didn't so state it.

COURT: He has not alleged the purpose yet.

MR. GOLDSTEIN: I want the record to show our objection to it.

COURT: The conversation of the defendant LaJesse not in furtherance of the conspiracy, would not be binding on the other defendants. The objection is overruled; we will hear what it is.

MR. GOLDSTEIN: Exception .

Q. What is that part of the conversation you heard?

A. I heard Mr. LaJesse say that he worked for Joe Brown, in Portland.

MR. GOLDSTEIN: I move that that answer be stricken out, as purely hearsay, and so far as the defendant Joe Brown is concerned, the jury should be instructed to disregard it,—I think it is prejudicial—and should be admonished to confine his testimony to conversation that might affect the defendant LaJesse and nobody else.

MR. ERSKINE: It is within the dates of the conspiracy, and it is conversation had with one of the co-conspirators, concerning another conspirator, prior to the arrest in this conspiracy, of either of them.

COURT: As I understand the rule, the statement of an alleged co-conspirator made in the presence of any of the others, would be admissible, and binding upon those who were present. The acts and declarations of co-conspirators made outside of the presence of the other defendants, only applies to the one who was present. I think that is the rule. So I will sustain the objection. You have not shown Joe Brown was there.

MR. ERSKINE: No, Your Honor.

COURT: If he was there and heard the statement, it would be admissible. But I understand he was not present?

MR. ERSKINE: No, he was not present.

MR. GOLDSTEIN: I ask that the jury be instructed not to consider it.

COURT: You will not consider this last answer of the witness. (1000-1001)

Upon cross examination by Mr. Long, he stated that he asked Mr. LaJesse where he got his liquor, and that he told him he was working for Joe Brown.

MR. GOLDSTEIN: There is the difficulty of having a number of defendants united in this conspiracy.

COURT: It cannot be helped.

MR. GOLDSTEIN: I know it cannot be helped. But I think I have a right to object on behalf of the defendant Joe Brown, to any conversation of that kind, and that the jury be instructed to disregard it, unless the Brown is connected with the defendant Joe Brown.

COURT: I will sustain the objection. The jury will not consider this testimony in regard to Joe Brown. Joe Brown was not present at the time of the conversation. (1002)

FRANCIS E. MARSH, a witness called by the Government, testified that in 1929 and up to September 1st, 1930, he was Assistant U. S. Attorney for the District of Oregon, and is acquainted with the defendant Walter Tooze; that he was in the District Court of the United States, Portland, on December 5th, 1929 and Clyde Ullman was in court at that time in relation to some judicial proceeding; that he was represented by Mr. Walter Tooze.

MR. GOLDSTEIN: I desire the record to show the objection on the part of the defendant Joe Brown to this testimony and move to have same stricken out upon the ground and for the reason it is incompetent, irrelevant and immaterial,

not tending to support the issues charged in this indictment.

COURT: Denied.

MR. GOLDSTEIN: Exception. (1008)

J. O. JOHNSON, witness called by the Government, testified that in 1929, and until October, 1930, he was attorney for the Bureau of Prohibition, Portland, Oregon; that Government's Exhibit 40 shows a filing mark as having been received on November 23rd, 1930. The Notary Seal is on February 6th, 1930, and it was lodged with him shortly after that. To the best of his recollection, it was lodged with him between the middle of February and the first of March, 1930.

MR. STIPP: I offer in evidence Government's Exhibit 40 for identification.

MR. GOLDSTEIN: So far as the defendant Joe Brown and other defendants similarly situated are concerned, we desire the record to show our objection to the admission of this communication upon the ground and for the reason it is incompetent, irrelevant and immaterial, and not tending to support any of the issues charged in the indictment, and in no wise affecting any of the defendants in this case so far as the testimony at the present time shows or indicates, and it is a document passing between one Art Hines and the department. It is purely self-serving. It is subsequent to any alleged conspiracy on the part of Hines because I want to point out to Your Honor at this time that the evidence indicates that in October, 1929, the connection of this man Art Hines

was terminated by the raiding of this still at the Fulmer ranch. (1011)

COURT: Before I admit this document you will have to show it was lodged there by one of these defendants—with this witness or his department—and further show who signed the document. (1012)

That the petition was transmitted to him either by mail or personally by Walter Tooze as attorney; that he didn't see who signed it; that he didn't see Art Hines during any of the time it was under discussion either before or after it was signed; that he is acquainted with the signature of Walter L. Tooze and the signature to the jurat in the Exhibit was the signature of Walter Tooze; that it was lodged with him by Mr. Tooze.

Q. Are you acquainted with the signature of Walter L. Tooze, defendant in this case?

A. I am, from correspondence with him.

Q. Whose signature is it to the jurat in that case?

A. That is the signature of Walter Tooze, Jr.

Q. And state whether that is the same person who lodged that petition with you?

MR. GOLDSTEIN: He doesn't say it was lodged with him by Tooze.

A. Yes, it is.

COURT: He said it was lodged either by mail or by person.

MR. STEARNS: If Your Honor please, for the purpose of the record here, there is no question but what this document was lodged with the witness

by Mr. Tooze; no question about it at all.

COURT: Very well.

MR. STIPP: I renew the offer then.

MR. GOLDSTEIN: If the Court please, we renew our objection upon the ground and for the reason that so far as indicated this apparently appears merely to be the Notarial acknowledge by Mr. Tooze of one of the defendants' signatures.

COURT: There is no question as to whether it was lodged by Mr. Tooze. That is in the record now.

MR. GOLDSTEIN: Even if that be true the fact remains so far as Joe Brown and other similarly situated are concerned, their objection is it is subsequent to any alleged transaction on the part of Mr. Hines. It had been terminated so far as he was concerned. Therefore, it is immaterial and incompetent so far as the other defendants are concerned.

COURT: In view of the statement of counsel for the defendant Tooze that it was lodged by the defendant Tooze, with him, the objection is overruled.

MR. GOLDSTEIN: Exception.

MR. STEARNS: On behalf of the defendant Mr. Tooze, we object to the introduction of this document as incompetent, irrelevant and immaterial and for the further reason that there has been no showing here at all that this was in furtherance of the conspiracy mentioned in the indictment—purely a collateral matter—no evidence at all that

Mr. Hines was part of the conspiracy at this time or that his act in any wise furthered the alleged conspiracy mentioned in the indictment. We believe, if Your Honor please, quite sincerely that to admit this document would be error in the record. I think that is true. I may be mistaken.

COURT: I understood the document applied to a car testified to here as involved in some of these transactions.

MR. STEARNS: There is no evidence, Your Honor, that the car was used.

COURT: Is that car described in this instrument, Mr. District Attorney?

MR. ERSKINE: This described a certain car that the testimony shows went into the Fulmer ranch as a pilot car, described as Motor Number 74800, with the serial number and the Oregon 1929 license number as 171009, about which there is testimony in the record.

MR. STEARNS: Any testimony that this car went into any still as a pilot car would be a mere conclusion on the part of the witness who so testified. There is no evidence here that this car was in any wise used in connection with any illicit liquor transaction; not one word of testimony. And furthermore, if Your Honor please, following the release of this car there is no evidence that it was ever used or intended to be used nor can any inference be drawn that it was intended to be used in connection with any illicit transaction. Furthermore the evidence of the Government's own witness is to the

effect that Art Hines following his conviction of the offense, which is under discussion at this time, was never thereafter engaged in any liquor violations. The testimony, I believe, of Mr. Moon was clear upon that point, that he was engaged solely upon a legitimate business, conduction of a garage over on Grand Avenue and there isn't one bit of evidence to the contrary. And I say again, Your Honor, that I believe to admit this in evidence will be error and I do think that it should not be admitted.

COURT: Did it describe or mention one of the cars that has been testified to here that was used by any of these defendants—if it does it is admissible. Now that is the only thing I want made clear to me. Is it one of the same cars testified to here? Are you sure?

MR. STEARNS: Just one more word, I should like to have counsel refresh the Court's memory if I am in error on this point. I do not believe there is one word of testimony here that this car was ever used by any of the defendants in this case in connection with any illicit transaction. There were some conclusions stated here, I believe, on the part of one or two of the witnesses but no evidence at all that this car was ever used by any of these defendants in any illicit transaction; and I think, if Your Honor please, if you care to go to the testimony on that point that it will be clear that there is no such testimony.

COURT: If you want further time to refer to

the testimony you may go ahead with some other witness and you can recall this witness after you look up that record. I want that clear because it would not be admissible unless it referred to one of the cars that have been testified to here, that were used by this alleged conspiracy. So I think I will withhold the ruling on this for the present so you may have an opportunity to refer to the record and you can look that up when we take a recess.

MR. STEARNS: In the meantime, if Your Honor please, I should like, if Your Honor cared, that this affidavit or application be submitted to the Court for examination.

COURT: Oh, yes, I will look at it.

MR. STEARNS: In connection with the point that we urge that there is no proof at all nor can any inference be drawn that this was used in furtherance of the conspiracy mentioned in the indictment.

COURT: Go ahead with something else. (1013-1017)

Whereupon the witness was withdrawn.

LEONARD REGAN, a witness called by the Government, testified that he was a Federal Prohibition Agent since 1920, and was such on May 13th, 1930.

Q. Did you see the defendant Wilford LaJesse on that date?

A. I did. I saw him on that date at Cathlamet.

Q. Did you have a conversation with him there that day?

MR. GOLDSTEIN: We call attention to the fact that this conversation with LaJesse, in a county outside of the issues here, would possibly relate to LaJesse but would have no application to anyone else. Any conversation that he had with LaJesse would be only with respect to LaJesse and would be an oration of the entire event.

MR. ERSKINE: Wait until I asked the question. I object to counsel interfering before I ask the question.

MR. GOLDSTEIN: This is not a matter of interference. I question counsel's right to blame me here for that. I have some rights here.

Q. Did you have such a conversation?

MR. GOLDSTEIN: Objected to as incompetent, irrelevant and immaterial, not binding upon any of the defendants in this case.

COURT: Overruled.

MR. GOLDSTEIN: Exception.

A. I was down there to check over a car that had been seized by the sheriff.

MR. GOLDSTEIN: Object to that and move that it be stricken out as not responsive to the question.

MR. ERSKINE: Yes.

COURT: It will be stricken.

Q. State what the conversation was. That is all that is asked you.

A. During the conversation with Mr. LaJesse he asked me if I knew Agent Moon. I said I did

not. Well, I said, "Do you know him?" He said, "Yes, sure I know him. I worked with him." He said, "I worked for Mr. Joe Brown, the big shot in Portland."

Q. The big what?

A. The big guy in Portland.

MR. GOLDSTEIN: He said "shot".

A. "Guy", is what he said.

MR. GOLDSTEIN: I move that any reference to Joe Brown be stricken out as not having any binding effect upon the defendant Joe Brown.

COURT: Denied.

MR. GOLDSTEIN: Exception.

A. He said he had worked with him with Agent Moon, and this informant had on two different occasions delivered moonshine whiskey to his place or brought moonshine whiskey to his place—one time a ten-gallon keg and one time two five-gallon kegs.

Q. Did you have any further conversation there?

A. That was the conversation as far as it related to the defendants in this case.

MR. GOLDSTEIN: Now, if the Court please, we desire the record to show that the defendant Joe Brown and others similarly situated move that this conversation affecting and relating to any others than LaJesse be stricken out and the jury instructed to disregard it upon the following grounds and reasons: First, that this was a conversation subsequent to the arrest of LaJesse and is an oration of some previous events that would only have any

binding effect upon the party communicating that statement; and second, upon the ground that there has been no evidence to connect the person he mentioned as Joe Brown as the defendant Brown, who is a defendant in this case; and third, upon the ground there has been no proof of any conspiracy as charged in the indictment or any conspiracy as between LaJesse and the defendant Joe Brown in this case.

COURT: Denied.

MR. GOLDSTEIN: Exception. (1018-1020)

Upon cross examination by Mr. Goldstein, he stated that he was in Cathlamet to take over a car that had been seized by the Sheriff's office by the Federal Government. That at that time LaJesse had already been arrested and was in custody and had been tried the night previous by the Justice of the Peace. He had already been fined and the conversation was subsequent to his arrest and trial.

MR. GOLDSTEIN: I renew my motion previously made.

COURT: Mr. Witness, in regard to this defendant, I understand you say this conversation that was had with the defendant LaJesse was after he was arrested on this charge in the indictment?

A. No, Your Honor. Another charge.

COURT: Not on this charge in this case. Was it after that or before?

A. I believe it was before if I am correct. Mr. Erskine can correct me if I am not.

Q. What date was that conversation?

A. May 13, 1930.

COURT: That was before he was arrested on this charge?

MR. GOLDSTEIN: The point I make is the connection of LaJesse with this conspiracy is set out prior to that time.

COURT: Just a question as to whether or not the defendant was arrested on the charge of conspiracy at the time. If so, it terminated the conspiracy as to that particular defendant unless there is evidence that after that he continued by some act or conduct to carry on the object and purpose of the conspiracy.

MR. ERSKINE: This indictment was returned the 20th day of September, 1930, a secret indictment so far as the defendant Wilford LaJesse was concerned and the defendant Joe Brown. They were apprehended long after the 20th of September.

COURT: That is the question I had in mind. Objection overruled. The question was whether the conspiracy had terminated in regard to LaJesse. I see it was not. I will overrule the objection.

MR. GOLDSTEIN: Exception. Does Your Honor also bear in mind that the witness doesn't know the identity of the person?

COURT: You mean Brown?

MR. GOLDSTEIN: Yes.

COURT: Yes, the objection is overruled.

MR. GOLDSTEIN: Exception. (1025-1026)

Q. What is your name again?

A. Regan.

Q. Mr. Regan, I was over there and could not hear very distinctly. I believe you stated that Mr. LaJesse told you that he purchased some whiskey off Mr. Moon and Mr. Grant, is that correct?

A. No, no.

Q. Did he tell you that they had delivered some whiskey to him down at his place?

A. delivered, yes. Made two deliveries at his place.

Q. Made two deliveries. You are positive that he did not tell you that he was buying liquor off them?

A. No, he didn't tell me that.

Q. Now, I believe you stated at the time that Mr. LaJesse made this alleged statement you didn't know who Joe Brown was; is that right?

A. Well, I had heard of a moonshine ring here conducted by a man named Brown here in Portland.

Q. Yes, but you know there is a great number of Browns in the City of Portland, don't you?

A. I suppose there is.

Q. You claim he stated to you that he worked for the "Big Shot" Joe Brown?

A. Yes.

Q. That is all he stated?

A. Yes, sir.

Q. Now, you know there are probably a hundred and fifty or two hundred and fifty Joe Browns in Portland, don't you?

A. Well—

Q. Well, you know that, don't you?

COURT: The witness is testifying he said a man named Joe Brown. All he is testifying to is that this man referred to the name Joe Brown. Whether it is this Joe Brown or not is another question. (1026-1027)

GUY B. MAY, a witness called by the Government, testified that he was employed by the Newberg Motor Company in Newberg, Oregon, and was so employed on March 3rd, 1930, and that he sold a Ford Touring car, Motor 82638866 on that date. Two men came in and wanted to buy a car, one of them being the defendant, Joe Brown, and the other Walter Wallace. Walter Wallace came back on July 31st, 1930, and paid for it. There was a Ford Coupe '24 turned in and the rest in cash.

MR. GOLDSTEIN: If the Court please, so far as the evidence of this witness is concerned I cannot see its materiality to the issues in this case and at this time I move that it be stricken out upon the ground and for the reason that it is incompetent, irrelevant and immaterial and not in support of the issues of this case.

COURT: Overruled.

MR. GOLDSTEIN: Exception. (1032)

H. G. ANDERSON, a witness called by the Gov-

ernment, stated that he was employed by the Blackwell Motor Company, Portland, Oregon, and has access to its records; that he has a record of the transfer to the Blackwell Motor Company of a Ford, Motor No. 826-38866, showing that it was turned into his company on May 17th, 1930, by V. H. Scholz, with address given at 224 Grand Avenue, Portland, Oregon, and bearing Oregon license No. for 1929, 314806; that he got a bill of sale for that car from Vic Scholz, and certificate of title turned in to them.

ARTHUR G. MEANS, a witness called by the Government, testified that he was a Federal Prohibition Investigator and has been such since April 6th, 1923, coming to Portland in July, 1930; that he saw Government's Exhibit 30 before, and that he knows the defendant Mussorafite and had a conversation with him on July 23rd, 1930, at his place of business the Super Malt Shop, 1068 Division Street, Portland. Agent Staley was with him.

Q. What was that conversation, that first conversation you had with him?

MR. GOLDSTEIN: On behalf of the defendant Joe Brown and other defendant similarly situated we object to any conversation between this witness and Dominick Mussorafite not in the presence of these other defendants upon the ground that it is narrative of past events and not binding or any connection or relationship shown with any of the other defendants. We object to it upon that ground.

COURT: Motion denied.

MR. GOLDSTEIN: Exception. (1039)

That they showed Mussorafite the invoice, being Exhibit 30 and he asked him if he knew a man by the name of Miller and he said "Yes" and they asked him if he sold him supplies and he said "yes", whereupon they asked him if the invoice was his writing and he said "yes" he made it out himself. They then asked him in reference to the item of 152 gallons and he said he didn't know anything about it. Staley then asked him if he had ever taken in whiskey for supplies and given credit on the supply bill for whiskey received and he said "no"; that he had not. That they started to leave the place, but they went back into the back room and Mussorafite's brother and a young lady and another man were there and in their presence he again asked Mussorafite if that was his invoice and if he had made it out and he said he had.

MR. ERSKINE: If the Court please, we offer in evidence Government's Exhibit 30 for identification.

MR. ROBISON: May I asked just one question? Were you present when this instrument was secured?

A. No, sir, I was not.

MR. ROBISON: It was turned over to you by Agent Staley afterwards?

A. Yes, sir.

MR. ROBISON: I object to the introduction of Government's Exhibit 30 on the ground and for the reason that the same was seized illegally, taken from the defendant Miller, alias Hodgson, without

the warrant of law and without his consent, that the same is incompetent and immaterial as to the defendant Dominick Mussorafite and further on the ground that it is immaterial and irrelevant as to the matters and things therein contained.

COURT: Objection overruled.

MR. GOLDSTEIN: On behalf of the other defendants we make the objection upon the ground it is incompetent, irrelevant, immaterial and not binding upon said other defendants and that the jury should be instructed to merely regard this instrument as affecting Mussorafite and none of the others.

COURT: Overruled.

MR. GOLDSTEIN: Exception. (1040-1941)

The instrument was received and marked Government's "Exhibit 30".

He further testified that he was out to the Zielenski ranch on July 10th, 1930, with Staley and they interviewed the people that were on the ranch there, Mr. and Mrs. Webb, Mr. and Mrs. Cameron, Nola Cameron and young Cameron.

MR. GOLDSTEIN: Objected to as incompetent, irrelevant and immaterial. The Camerons are not defendants in this case and any relationship or dealings with the Camerons would not have any possible relevancy to this case.

COURT: Are they mentioned as co-conspirators?

MR. GOLDSTEIN: They are mentioned as

co-conspirators, yes, Your Honor.

COURT: Objection overruled.

MR. GOLDSTEIN: Exception.

A. On the 10th day of July, we took down the statements—I took down the statements and they were written out in pencil, I believe, and were signed by the different parties, six of them in all, and all of them read their statements with the exception of the elder Mr. Webb. He had some trouble with his eyes and that statement had to be read to him.

MR. HELGERSON: I move that be stricken, Your Honor, as conversation not in furtherance of this conspiracy, or any act of his or Camerons at that time would not be in furtherance of the conspiracy charge in this indictment.

COURT: Objection overruled.

MR. HELGERSON: Save an exception.

MR. CRITCHLOW: Not binding on the other defendants.

MR. GOLDSTEIN: We move on behalf of the defendant Brown and all the other defendants not particularly mentioned by this witness — we move to strike out on the ground and for the reason that the testimony given by this witness was testimony in the nature of a narrative of past events, past facts, and not in furtherance of the conspiracy, and not in the presence of these other defendants and not binding upon them and only binding, if at all, upon the particular persons mentioned by this witness.

COURT: Overruled.

MR. GOLDSTEIN: Exception. (1042-1043)

MR. RYAN: Mr. Means, this statement you spoke of was taken after the arrest of the defendants at the Zielenski ranch, on this charge?

A. There was no arrest made at the time, that I know of.

Q. Were they taken into custody?

A. No, was no one taken into custody.

Q. What did you do, did you go and take this statement?

A. Yes.

Q. Didn't make any attempt to place them under restraint at all?

A. No, sir. (1044)

Upon cross examination by Mr. Robison, with respect to the item on the Exhibit designated as 152 glls he interprets that as 152 gallons; that when he asked Mussorafite if it was whiskey he said he didn't know anything about it; that they had some discussion about the price of whiskey and figuring it at $3.50 for 152 gallons it amounted to $523, the amount of credit on the bill. Mussorafite said he didn't know anything about the price of whiskey; that witness put his interpretation on it that it was whiskey.

Upon cross examination by Mr. Goldstein, he testified that this conversation with Mussorafite was long after the sale of the merchandise by Mussorafite to Miller and after the still had been removed from the Zielenski ranch; that no other defendant was present at the time of this conversation.

S. W. REYNOLDS, a witness called by the Government, testified that he was employed by the Chase Garfield Motor Company as salesman for the sale of Chrysler automobiles; that he has a record of the sale of Chrysler 77, Model W 13251, Motor number, showing that the car was sold on May 19th, 1930, to Elsie Sherman, whose address was given as the Morris Hotel, Portland.

MR. GOLDSTEIN: We want to object to any testimony of this witness relating to Elsie Sherman. I don't see her name mentioned in this indictment.

Objection overruled. Exception saved. (1050)

A Chrysler 65 Business Coupe was traded in for this Chrysler 77 Coupe. The license of the car turned in was License No. 103458 and Motor number 203159.

MR. GOLDSTEIN: Defendant Joe Brown and others similarly situated, move that the testimony given by this witness be stricken out as incompetent, irrelevant and immaterial, not tending to prove any issue in this case, and not concerning any of the defendants in this case.

Motion denied. Exception saved. (1051)

A. S. WELLS, a witness called by the Government, testified that he is State Chemist and it was admitted by all the defendants that he examined Government's Exhibits 1A to 20 inclusive and Government exhibits 22 to 29 inclusive, and that they contained more than ½ of 1% of alcohol.

MR. ERSKINE: Now, if the Court please, we

offer in evidence Government's Exhibits 1-A to 20 inclusive, and Government's Exhibit 22 to 29.

MR. GOLDSTEIN: If the Court please, on behalf of the defendant Joe Brown, and other defendants, I move that the offer be excluded, and the jury instructed to disregard this evidence, upon the following grounds: First, it is incompetent, irrelevant and immaterial, in that there has been no evidence tending to show the existence of a conspiracy between my defendants and the defendants named in the indictment, and that the acts and conduct of the parties by whom and from whom these exhibits were secured, are not binding upon my defendants and the other defendants.

Motion Denied. Exception saved. (1052-1053)

MR. GOLDSTEIN: If I may be permitted to add an additional objection that has not been mentioned, and that is we object to the introduction of these exhibits, upon the ground and for the reason that they were obtained by officers Moon and Grant, by virtue of withdrawals from various separate and distinct kegs of liquor not identified or connected with many of the defendants in this case, and by virtue of separate, distinct and isolated transactions, which would be at variance with the one specific conspiracy charged. In other words, it would be at variance in the proof between that charged and the nature of the testimony presented.

Objection overruled. Exception saved. (1054-1055)

That the witness received these exhibits from Dan Kerfoot on May 22nd, 1930, and they were returned the next day in the same condition as when they were received.

MR. ERSKINE: Now I renew the offer.

MR. GOLDSTEIN: May the record show the same objection and for the same defendants as to the offer originally made, before this additional testimony was adduced.

Objection overruled. Exception saved.

MR. GOLDSTEIN: I would like to have my motion in a little better form. May I repeat it, as I would like to have it in proper shape: We object to the introduction of these exhibits, as being incompetent, irrelevant and immaterial, and upon the ground that there has been no evidence to show the existence of the specific conspiracy charged in Count 1 of the indictment. Second, upon the ground that these exhibits were procured by Moon and Grant at such dates and under such circumstances as indicated, and tend to show a variance between the proof offered, and the indictment, in that they involve separate, isolated and distinct transactions, not connected with the one specific conspiracy charged.

MR. RYAN: I desire to renew the objections previously made, and if I may be permitted, for a moment, I want to say, in addition Count 1, which has been adverted to by Mr. Goldstein—I make the specific objection as to Counts 5 and 8, as far as Barrahan and Daskalos are concerned, on the

ground and for the reason that the rule of the state, is that the possession in these two counts must be conscious possession.

COURT: We are trying this under federal law, and not the state laws of Oregon.

MR. RYAN: I think that is the Federal rule.

Objection overruled. Exception saved. (1056-1057)

Whereupon, the Government's Exhibit 1-A to 20 and 22 to 29, inclusive, being samples of liquor were received in evidence.

BERT J. MARTIN, a witness called by the Government, testified that he lived at Hebo, Oregon; that he knows the defendant, Walter Tooze; that he saw him on December 11th, 1928, at Tillamook, Oregon, there being present Roy Saling and Harry Nielsen; that Tooze was the lawyer defending the 3 of them in some case. They then went up to a room in the Tillamook Hotel to discuss the case that was on. The next day, Tooze went over to the Court House to see the Judge and when he returned to the room there were present Roy Saling and Harry Nielsen.

Q. Now what conversation if any did you have there?

MR. GOLDSTEIN: On behalf of the defendants not affected by this conversation, we object to the admission of any conversation with Mr. Tooze, upon the ground and for the reason that it is incompetent, irrelevant and immaterial, and done and had prior to any alleged connection with any

of the defendants not affected by this testimony, and not in furtherance of any alleged conspiracy, or no proof of any existence of conspiracy as charged in the indictment being shown.

Objection overruled. Exception saved. (1070)

That they talked over their case and Mr. Tooze said he had 10 gallons of liquor that he would like to get rid of; that Roy Saling asked him what he wanted for it,—"$8.00 a gallon?" And Mr. Tooze said "allright" and Saling said he would take the 10 gallons and paid Mr. Tooze the $80.00. Then Tooze said he will fix the case up with the Judge and that when they got through and came back they would go out and pick up the liquor; that when he returned, he told them he had settled their case for $1,000 apiece and a year parole. Then Roy Saling, Harry Nielsen and himself proceeded out to get the 10 gallons of liquor. Roy Saling, Harry Nielsen and himself went in one car and Tooze and a lady that went by the name of Elsie in another car. They went about 8 miles South of Tillamook and they located alongside the road and found the 10 gallons of liquor which was loaded in witness's car and taken to Mr. Saling's house.

MR. GOLDSTEIN: If the Court please, on behalf of the defendant Joe Brown, and others similarly situated, I move that the testimony of this witness be stricken out, and the jury instructed to disregard it, upon the ground that it is incompetent, irrelevant and immaterial, and outside of the scope of the conspiracy charged in the indictment, and at variance thereto, in that it relates to sep-

arate, isolated transactions, not connected with one specific conspiracy charged; and for the further reason there has been no evidence introduced tending to show the existence of any conspiracy as charged between my defendant and defendants similarly situated, and the parties affected by the testimony of this witness, and that therefore the acts and conduct of the party mentioned by this witness, not in the presence of the other defendants, and not in furtherance of the specific conspiracy charged, are in no wise binding upon the defendants now on trial; nor has the witness' testimony any relation to the specific charge mentioned in the conspiracy count in the indictment.

Motion denied. Exception saved. (1072-1073)

MR. HARE: I would like, Your Honor, in my humble way, to do what is in my power for Mr. Tooze. I desire to move that the testimony of this witness be stricken out for the reasons assigned by Mr. Goldstein in his general objection to the testimony of the witness, and for the further reasons as follows: That the testimony of this witness is incompetent, irrelevant and immaterial, and does not tend to prove any issue in this case, as far as Mr. Tooze is concerned; that the specific act testified to by the witness is not set forth or referred to in the indictment and is not a part of the conspiracy charged, or any conspiracy with respect to which testimony has been offered by the government. That the specific act with respect to which this witness has testified was not done in furtherance of,

or in pursuance of the conspiracy charged in the indictment, and the act testified to was a separate, distinct, independent offense; and for the further reason that the alleged sale and delivery of liquor as testified to by this witness, shows that this witness was an accomplice, and the government has not proven the existence of any conspiracy against the defendant Tooze, or any participation of the defendant Tooze in any conspiracy charged in the indictment; and that the defendant Tooze has not been identified as the person with whom this witness has talked, nor has the defendant Brown been identified as any defendant in this case. On these grounds we ask that the testimony be stricken out.

COURT: It is charged in this indictment that defendants did conspire and confederate for the manufacture, sale, barter, possession, dealing in and delivering and furnishing intoxicating liquors. This testimony relates to a sale.

Motion denied. Exception saved. (1074-1075)

That thereupon the following proceedings were had:

COURT: Gentlemen, in regard to the motion connected with the testimony of Murphy I have given that matter further consideration and I have concluded to sustain the motion to strike that testimony.

MR. GOLDSTEIN: Thank you, Your Honor.

COURT: The testimony relating to a conversation had with Moffett at the prison. On further

consideration I feel that I should sustain the motion to strike that testimony.

I will state to you, gentlemen of the jury, in regard to the testimony you have heard of the witness Murphy that you will not consider that at all. The Court has stricken his entire testimony from the record and sustained the motion of the defendants to strike and you will not allow it to prejudice you in any way against any of these defendants or consider it in any manner against any of the defendants now on trial.

JUROR: That was the one just before this one?

COURT: He was the gentleman who testified he represented the Department of Justice—a conversation at McNeil Island that he said he had. He just testified to a conversation with another party. So you can locate the witness, that is the gentleman (referring to man who stood up on request.) That is all.

COURT: Now, in regard to the objection to Government's Exhibit Number 40, which has been marked for identification, without making any comment at all, I have concluded to overrule the objection. It may be admitted.

MR. GOLDSTEIN: Will exception be noted as to the other defendants not affected by this document?

MR. STEARNS: Exception.

MR. GOLDSTEIN: On behalf of the defend-

ant Joe Brown and other defendants not affected at all by this document, we desire to have an objection noted as to its materiality or relevancy and I ask that the jury be instructed in that regard and may we have an exception.

MR. ROBISON: We save an exception.

EXHIBIT NO. 40 RECEIVED IN EVIDENCE. (1076-1077)

MR. GOLDSTEIN: On behalf of the defendant Joe Brown, Mussorafite and other defendants I move the testimony of this witness be stricken out and the jury instructed to disregard it upon the ground that it is incompetent, irrelevant and immaterial and outside the scope of the conspiracy charged in the indictment and at variance thereto in that it relates to a separate isolated transaction.

MR. ERSKINE: I think Mr. Goldstein made that objection before lunch.

COURT: To save time let him finish it. Go ahead.

MR. GOLDSTEIN: In that it related to a separate isolated transaction long prior to any of the alleged entry into this alleged conspiracy by my defendant as well as by the other defendants, and is not connected with the one specific conspiracy charged, and for the further reason that there has been no evidence introduced tending to show the existence of any conspiracy as charged between my defendant and the defendants similarly situated and the parties affected by the testimony of this

witness and that therefore the acts and conduct of the parties mentioned by this particular witness not in the presence of the other defendants and in pursuance to the specific conspiracy charged, and long prior to the time when it was alleged that said defendants represented by me and other counsel entered into the alleged conspiracy and therefore in no wise binding upon the defendants now on trial; nor has the witness' testimony any relation to the specific charge mentioned in the conspiracy count of the indictment.

COURT: Denied.

MR. GOLDSTEIN: Exception. (1077-1078)

Upon cross examination by Mr. Hare, he testified that Mr. Saling has gone to Canada to keep from paying his fine; that before he left, Saling was in the dairy business and making moonshine; that Harry Nielsen committed suicide to keep from paying his fine; that he was in the dairy business too and engaged in making moonshine; that witness was in the dairy business, but had nothing to do with the still, being merely a visitor; that Mr. Tooze was acting as their attorney, they having all been arrested for violating the Prohibition Law; that Mr. Tooze entered a plea of guilty for the, which they did, upon his advice. That he thereupon became angry at Mr. Tooze and had on one occasion told a Mr. and Mrs. Hill that Mr. Tooze at that time misrepresented him or didn't properly look after his interests; that he never said he desired to "get Walter Tooze". That he could not tell who it was he told this story to the first time, he did tell Mr. Cahoon, Government Agent, about

3 weeks ago at his place of business at Hebo. He was told by Mr. Cahoon that he would not be prosecuted for transporting the 10 gallons of liquor from the cache to Saling's home after he testified against Walter Tooze. Prior to telling Mr. Cahoon, he expects he did tell someone about having seen the sale of liquor made; that was when he went to Tillamook the day that Mr. Tooze was arrested and the Sheriff asked him about it and witness said he wasn't going to lie about it; that he was never prosecuted or indicted for transporting that 10 gallons of liquor; that he don't feel kindly towards Mr. Tooze now; that he didn't deserve the sentence he got and never thought he deserved it; that he plead guilty in order to save another man from going to the State prison for 3 years, according to Tooze's advice; that he did it to save Ray Saling; that witness had wanted to fight the case, having 16 witnesses to prove that he had nothing to do with it; that Walter Tooze is as guilty as he is; that he thinks he deserves it as well as he got his.

Upon cross examination by Mr. Goldstein, he testified that he had been convicted of a crime, in which he pleaded guilty with Saling and Nielsen, being the one conviction for operating a still for the manufacture of liquor.

MR. STEARNS: Now, at this time, if Your Honor please, I desire on behalf of Mr. Tooze to move that this testimony be stricken for the reason if you please it is not shown at all to have any relation to the charge contained in count one of this indictment. The most that could be said for it is that it is only a separate, distinct transaction. It

has no tendency to prove the furtherance of any conspiracy. For those reasons, if Your Honor please, I think it should be stricken from the record.

COURT: The motion will be denied.

MR. STEARNS: Exception. (1098)

EMMONS JELKIN, Recalled. Testified that with respect to the Baker ranch, the automobiles he used were an Oldsmobile Coupe, Chrysler 65 Coupe, and a Ford truck; that the Oldsmobile and Chrysler were used on the Baker ranch at Maple Point, Washington; that the Oldsmobile was also used in Seattle, and the Zielenski ranch and the Ford truck was used on the Baker ranch at Maple Point and the Zielenski ranch; that he knows the owner of the Olds Coupe; that he used it to haul whiskey to Tillamook on one occasion; that Frank Hodgson told him to drive the car, and that Frank Hodgson told him that he had bought the car in the name of A. B. Swanson.

MR. GOLDSTEIN: I ask that that be stricken. That is purely hearsay; it is not the best evidence.

COURT: He said he bought the car in the name of Swanson?

A. Yes.

COURT: That would not be hearsay. He is stating what one of the defendants said. Motion denied.

MR. GOLDSTEIN: Exception. (1102)

That this conversation was in November, 1929; that with respect to the Chrysler 77, Elsie Hodgson had a

conversation with him in May, 1930; that the car was her car; that she had traded the Chrysler 65 Coupe in on it to be registered under the name of Elsie Sherman; that at the time he was arrested, at Oregon City for an overload he was driving a new Chevrolet panel-body truck; that Tex Keene told him in May, 1930, that he had traded in a flat-body Chevrolet truck for this panel-body truck at Seattle, Washington, with the Chevrolet Company; that that was all the conversation he had on that occasion; that after witness' arrest in Oregon City he had another conversation with Rex Keene.

Q. What was that conversation?

MR. GOLDSTEIN: Object to any conversation subsequent to his arrest and alleged connection with this conspiracy in this transaction; the reason being that that is a purely self-serving declaration and having nothing to do with the object of the conspiracy or its furtherance and therefore not binding upon any of the defendants in this case.

MR. ERSKINE: If the Court please, this was the arrest made at Oregon City for overload of the truck. It hadn't anything to do with this conspiracy.

COURT: Overruled.

MR. GOLDSTEIN: Exception.

A. I was trying to find out what name he had bought the truck under. We got papers to find out he had bought it under the name of A. B. Stewart.

Q. That is what he told you?

A. Yes, I saw it on the paper.

MR. ERSKINE: You may cross examine.

MR. GOLDSTEIN: If the Court please, I move that the testimony of this witness be stricken out and the jury instructed to disregard it upon the ground it is incompetent, irrelevant and immaterial and outside of the scope of the conspiracy charged in the indictment and at variance thereto, and for the grounds previously set forth with respect to the testimony of other witnesses.

COURT: Motion denied.

MR. GOLDSTEIN: Exception. (1104-1105)

Q. When did you have this conversation with Rex Keene concerning the Stewart car?

A. Well, it was along in May the first time on the Zielenski ranch.

Q. Did you ask him how he happened to buy the car under the name of Stewart?

A. Not at that time, no.

Q. What was the occasion for you making such an inquiry?

A. Well, I got picked up in Oregon City with the truck and it didn't have the registration card in it and I didn't know who it belonged to.

Q. Was there any particular reason for you to know?

A. Yes.

Q. Why?

A. Because I should know—the driver.

Q. You had already been arrested and paid a fine, had you not?

A. Yes.

Q. The incident was closed?

A. In case we got stopped again.

Q. And you asked him in whose name it was registered?

A. Yes.

Q. And then he told you A. B. Stewart?

A. A. B. Stewart.

Q. You remembered that name, did you?

A. I saw it on the contract.

Q. Who showed you the contract?

A. It was in Elsie Hodgson's room.

Q. You opened the desk or a drawer?

A. No.

Q. It was lying on the bureau drawer, too, was it?

A. It was out, yes.

Q. And you happened to see that, too, did you?

A. Yes.

Q. Now then, when did you first hear of the name of Swanson?

A. In November, 1929.

Q. How do you happen to fix the date?

A. That is when he first bought the car.

Q. Who bought the car?

A. Frank Hodgson.

Q. Did you see the papers in connection with it?

A. No.

Q. How did you first find out that it was bought in the name of Swanson?

A. Frank Hodgson told me.

Q. How did you happen to inquire?

A. Oh, I just wanted to know what name he bought it under.

Q. How long after it had been purchased?

A. I imagine around about a week.

Q. What was the particular occasion or the reason for your wanting to know?

A. In case we ever got stopped, driving it.

Q. How do you account for the fact that when you got this car, you claim you were pinched for overloading, you didn't make any inquiry about its ownership or registration until afterwards?

A. I thought the papers were in the car.

Q. You were using the car?

A. Yes.

Q. You didn't find it in the car?

A. No.

Q. And you had used the car for how long?

A. About a month and a half off and on.

Q. Didn't seem to concern or worry you about it during that month and a half, did it?

A. No.

Q. You are the man that was known as Harry Miller in Portland, Frank Campbell at the Zielenski ranch and Fred Trowberg in Seattle?

A. Yes.

MR. GOLDSTEIN: That is all.

CROSS EXAMINATION

Questions by Mr. Helgerson:

Now, when was it you had this conversation with

Elsie Hodgson where you claim she told you she had bought this car under the name of Elsie Sherman?

A. I saw the registration card in the car.

Q. When did you have this conversation? You understand English?

A. I don't remember the exact date.

Q. About when was it?

A. The latter part of May or first of June, 1930.

Q. And whereabouts did you have this conversation?

A. In her room.

Q. Morris Hotel?

A. Yes, sir.

Q. That is where you were living under the name of Mr. and Mrs. Frank Campbell?

A. Under the name of Frank Campbell, yes.

Q. Where you were registered as Mr. and Mrs. Frank Campbell?

A. No.

Q. As you testified the other day. Didn't you so testify?

A. I said I didn't remember of registering under that name. (1110-1114)

That thereupon the Government rested.

Whereupon the defendants, Joe Brown, Rudolph and Frank Bouthellier severally renewed their motions to strike out the testimony of the various witnesses called by the Government in so far as they pertain to conver-

sations and facts not connected with said defendant and not in furtherance of the charge in the indictment, as more specifically presented at the time said testimony was introduced, which several motions were denied and exceptions taken thereto.

Whereupon the defendants, Joseph Brown, Rudolph Bouthellier and Frank Bouthellier moved that all the testimony offered by the Government in support of Count I of the Indictment be sticken out upon the ground that such evidence was at variance with the charge in Count I and outside the specific scope of said count, which motions were severally denied and exceptions duly taken.

Thereupon the defendants, Joseph Brown, Rudolph Bouthellier and Frank Bouthellier severally moved for a directed verdict as to Count I of the indictment and to the Counts in which they were named, upon the ground that the evidence was insufficient to submit to the jury, upon the specifc charges therein contained, and for the reasons advanced during the course of the trial, which motions were severally denied and exceptions duly taken.

Thereupon Joseph Brown, by his attorney, submitted the following motion:

> MR. GOLDSTEIN: Now that the motions to strike have been disposed of by your Honor's ruling, at this time on behalf of the defendant Joe Brown, and all the defendants named in count 1 of the indictment, and only directing my motion to count 1 of the indictment, and to nothing else, I move at this time on behalf of the said defendant

Joe Brown and such other defendants named in count 1, for an instruction to the jury directing the jury of acquittal as to each and every one of the defendants named in count 1 of the indictment, and upon that motion, as far as the defendant Joe Brown is concerned, I state to your Honor frankly and sincerely that I have sufficient confidence in the merit of that motion for a directed verdict that I propose to stand upon that motion and to offer no evidence on behalf of the defendant Joe Brown, in the case further, so that your Honor can be in position to dispose of this motion for a directed verdict on behalf of the defendant Joe Brown, and I make this motion upon this ground; That he is only charged in count 1 of the indictment and none other, and so far as he is concerned in this case must stand or fall upon count 1 of the indictment. I make the motion on the ground and for the reason the evidence in this case, tends to establish at least five separate and distinct conspiracies, as I shall name them, and that therefore the evidence is totally at variance with the testimony as adduced and charged in the indictment.

Thereupon the following ruling was made and exception thereto taken:

COURT: Motion denied for a directed verdict, except as to the defendants Thompson and Short.

Exception saved.

Thereupon the defendant Walter Tooze offered testimony in his behalf.

WALTER L. TOOZE testified that he was an at-

torney, admitted to practice in the State of Oregon, with offices in Portland, since November 1928; that he was engaged in both civil and criminal practice; that shortly after he came to Portland, he met Bert J. Martin, the Government witness. He represented him, together with Ray Saling and another on indictments charging them with the possession of a still or the manufacture of liquor in Tillamook; that he went to Tillamook to investigate the case, as the result of which he advised all defendants to plead guilty, which they did; that the testimony of Martin that on December 11th, 1928, he sold Saling a 10-gallon keg of moonshine whiskey was false; that no Mr. Brown was with him at the time testified to by Mr. Martin, nor was Mrs. Elsie Hodgson; that he didn't personally know her at that time, but that he knew her husband.

That he first became acquainted with Joe Brown and Wm. Brown, either in 1925 or 1926; that he, together with Robin Day, an attorney, represented them in Salem in a criminal case which was then pending against them there; that he did very little work for the Browns until in 1927. Joe Brown had gone into the automobile business and there was considerable litigation growing out of some land business; that he settled that litigation and also closed up their partnership business in 1927 or 1928. There was just a little civil business and that was all he ever did for ether one of them outside of that first case; that besides himself being employed by the Browns in straighteningout their business affairs, Mr. Clarence Beckman, an attorney in Portland, also represented them. The last business he ever

did for Joe Brown was when he tried a personal injury case for him in Marcy or April, 1929, at Oregon City. He also did some business for his wife, who is half Indian and she had him look after some allotment from the Government. With respect to the Rickenbacker automobile identified by Mr. Gabrielson as having been purchased from Mrs. Brown, he testified as follows:

A. I never owned the Richenbacher. After I tried this case, Critser vs. Brown—that was after those boys had dissolved partnership—Joe Brown was broke, and shortly after that he left and went down to Southern Oregon, I believe; I am not sure about that—but went to Southern Oregon, as I understand, to Marshfield; and I knew all he had left was this Richenbacher.

MR. ERSKINE: If the Court please, the question was asked if he ever owned this Richenbacher.

A. No, he asked an explanation of that.

COURT: Go ahead.

A. And that was all he had left; and this judgment was hanging over him down there, and he had transferred it, or caused it to be transfered to his wife; and he was gone, and I met her, and I asked her about this Richenbacher car; she said she had it; I said, "I wish you would turn that over to me as security for my fee," and I said, "Before this fellow on this judgment jumps onto it." So she turned the car over to me; my fee was $250.00; she turned it over to me, I had it about ten days, and she called me up and wanted it back, and I gave it back to

her. That is the last I ever saw of the Richenbacher car; haven't seen it from that day to this. However, I didn't sign the papers on that day. I came to a settlement with the Brown Brothers on May 9, 1929; I came to a settlement out there for the business I had done for them, including the settlement of their partnership and the settlement with Regenroth, and all this stuff I had done. They had paid me a little along and we made a mutual settlement out there of our accounts, and as a result of that settlement I was paid what was due me on the Critser Case, and I signed the title back to him in blank and handed it back to Joe Brown, and I don't know what he did with it. That was on May 9th, and the registration slip I signed on that date; I signed the title in blank; I see the title here was filled in with typewriting dated June 1st. I didn't fill that in; that was May 9th I handed this title back to him signed in blank; he was then dealing in new and second hand cars.

Q. When you mention "he" you refer to Joe Brown?

A. Yes.

Q. Where die he have his place of business at that time?

A. I think he was living out here on the Foster Road somewhere. I am not sure. He was dealing mostly through Therkelson. (12-14)

That at that time Joe Brown was engaged in the business of buying and selling automobiles at Hubbard until he went broke and then came to Portland, where

he understood he was buying and selling secondhand cars through Therkelson and Hartman of Silverton.

That sometime in October, 1929, he was called by Mrs. Anderson to represent her husband who was arrested in connection with a still found at the Fulmer ranch near Rickereall. Robin Day was representing Moffitt; that the U. S. Commissioner at Salem asked him who represented Reed and Ullman who were likewise arrested at that time; they said they had no attorney and Reed asked him if he would represent him. Witness said he would; Ullman took no part in it and had no attorney and witness assumed to represent him at that hearing as a gratuitous proposition. All that came up at that time was the question of setting bonds; that he was also present at the preliminary hearing before the Commissioner. In the meantime, Moffitt, Anderson, Reed, the Taylor girl, Mrs. Anderson and, he thinks, Ullman and Robin Day, all came to his office in Portland to see if bonds could be arranged. At that time witness told Ullman that he was representing Anderson and also Reed and he thought he should have another attorney and recommended Shelton, an attorney who officed with him, and Shelton did represent Ullman at the preliminary hearing while he represented Anderson and Reed and Day represented Moffitt and the Taylor girl. Moffitt, Reed, Anderson and Ullman were subsequently indicted by the Federal Grand Jury. Some question came up at the preliminary hearing relative to the Chevrolet car that had come on the premises after the truck had gone in there. Moffitt was driving a Chevrolet at that time and Miss Taylor was riding with

him. Robin Day was representing them, and the discussion came up about releasing the Chevrolet.

That witness understands now that Ullman's true name is Hines; that prior to that time, he didn't know him personally, although he had known him by reputation; that at the time they were there for the purpose of fixing the bail and later at the preliminary hearing, he didn't know that Mrs. Hines and the man that was arrested as Ullman were husband and wife. He never saw Ullman nor any of these men until they were finally indicted, but as soon as they were bound over to the Grand Jury he and Day went to see U. S. Attorney Neuner and Assistant U. S. Attorney Marsh about getting some recommendation if they would plead guilty. They also discussed the truck that had been confiscated and the Chevrolet, and from the conversaton, witness got the understanding that they agreed as a part of the settlement that they would turn the Chevrolet loose. They finally came to the understanding with March, approved by Neuner, that if Ullman, or Hines, Reed, Moffitt and Anderson pleaded guilty, they would recommend that Anderson get a year in the County Jail, that Moffitt and Reed take 13 months at McNeil Island, and Ullman pay a fine of $300.00; that after the indictment was returned they all pleaded guilty and received the sentences agreed upon.

That Exhibit 40, being the petition for remission or forfeiture, was prepared by him in pursuance to his talk with the U. S. Attorney's office; that Mrs. Hines communicated with him and wanted to know why she didn't have her Chevrolet car back; that at that time he didn't

know Ullman was Hines, the husband of Mrs. Hines; that when Mrs. Hines communicated with him he went to see Mr. Johnson, the attorney for the Prohibition Department, and called attention to the agreement. He said he had no such agreement; that Mr. Marsh also said he didn't remember any such agreement, although he remembered talking about it; that he asked Mr. Johnson what the situation was. Mr. Johnson said that the Government valued the car at less than $500 and was at that time proceeding summarily to sell it and he asked Mr. Johnson about the procedure. Mr. Johnson explained that a claim might be filed and a bond put up to pay the costs and when that was filed it would stop the summary sale. Then it was up to the U. S. Attorney to libel the car. So witness got ahold of Mrs. Hines and explained the situation and asked that her husband be sent in. She said he was not there, so witness told her to come in, because the time was almost up. Whereupon witness prepared the claim and gave a surety bond; that thereupon witness testified as follows:

> And I prepared the claim and Mrs. Hines took it out; I told her to have her husband come in and have him sign it. I am out of the office so much, or being away from the office so much, I couldn't make an appointment with anybody, and make no appointment for the office; hardly ever make an appointment for the office. So she took it out, and a few days later came back with it signed by Mr. Hines. And I filed that matter, and that threw the whole thing into the Department of Justice. After it got up here in the Department of Justice I

talked with Mr. Neuner about the situation, also talked with Mr. Marsh about the situation, and both of them said they had no right to hold the car. (25)

That they so advised the Prohibition Department and told them to turn the car back to them. Mr. Johnson, however, said the U. S. Attorney's office had no right to give that order to turn it back and suggested that witness file a petition for remission or forfeiture; that witness thereupon reported this to Mrs. Hines and he tried to get ahold of Mr. Hines, but she said he was out, whereupon witness testified as follows:

I said, I will prepare this petition of forfeiture —the first one I had ever prepared—and taking as a basis of my statement in this petition, this Government Exhibit 40, my remembrance of the statements made by Mrs. Hines and the Taylor girl at the preliminary hearing in Salem, I prepared this petition, and then told her it was ready, for him to come in and verify it.

Q. Did he come in?

A. Now I don't recall whether he did or not. I don't recall for certain whether he came in or not. It would seem that he did, but at the same time it is possible that I took his affidavit over the telephone, or I sent it out, just the same as I did with other claims, and put the jurat on. (27)

Q. Now the question, the prime question that the jury will be interested in here, I imagine, on that score, was whether or not at the time this petition was acknowledged and filed, you knew whether

Art Hines and Clyde Ullman, the man whom you had represented at the preliminary hearing, were one and the same person. Did you, or did you not?

A. I didn't know any such thing, or I would not have prepared that petition in that way. Of course not. (27-28)

That thereafter found out the true identity of Ullman; that in the late spring or early summer of 1930 he was driving down Union or Grand Avenue, had a tire puncture and drove into the first garage he came to and it was Ullman's. Ullman changed the tire for him and in the course of the conversation he learned that his true name was Hines.

With respect to his first acquaintance with Frank Hodgson, it was in 1927 or early in 1928. He testified that he was then practicing in McMinnville. He received a call from a man in Amity desiring to make an appointment with him; that the man came to his office and introduced himself as Frank Hodgson. He had a can with him.

He had in this can a lot of muck, and at the time he explained to me they had been operating a still at Amity on these premises that they owned and occupied, but told me they had dismantled the thing some three weeks before, but the officers had raided, and they had this thing in the chicken house, and just out of the chicken house had a sink hole, or something, where they dumped the refuse; I don't know what they called it, after they had this still, and that that had been mixed over with dirt. He said when the officers came out there they had

taken a sample of this dirt or mixture they had there, and he wanted to know from me whether they could convict him of the possession of mash, when that was all they had. I advised him I didn't think they could, but I said I would investigate the matter. So I went down to see the Sheriff, which I always did in every case the Sheriff ever had there, because he always told me the truth about it, and I asked him about it, and he told me what he had found out there; and I advised my client I didn't think would be any prosecution; and there wasn't. (30-31)

That shortly thereafter Frank Hodgson and his father, Thomas Hodgson came to see him about bringing a civil suit against one Corbett relative to an exchange of real property; that he didn't see Frank Hodgson again until shortly after the 1st of 1927, after the witness had opened up a law office in Portland.

Frank Hodgson and his wife, Elsie Hodgson, came to my offices here in Portland one time, with reference to a young lad who was under arrest at Astoria, and employed me to go to Astoria and look after his interests, and I attended to that for them. I never saw them again—that is the first time that I had met Mrs. Elsie Hodgson—I never saw them again until—oh it was some time in the spring of 1929; (33)

That about March or April, 1929, Mrs. Hodgson came to hs office for advice; that she wanted her husband to give up the liquor business and asked him to try and induce him to do so; that some time in June or

July, 1927, she brought her husband to the office and witness advised him he had no business fooling with the liquor business and to cut it out and he said he would.

That he never saw them again until the latter part of February, 1930; that they had not completely paid him for the civil work that was done for them and he didn't know where they were. He heard of their whereabouts from Robin Day, who had done some work for Hodgson. Witness had some business in Seattle and while there thought he would try and collect for his professional services; that he got ahold of Joe Brown, whom witness knew had had some business connections with them.

> So, Mr. Joe Brown and his wife and I left here Saturday morning early, and went to Seattle, and registered at the Butler Hotel, and while I was out —transaction my business with the Hogues, and up at the court there, Brown was seeking to locate these people. When I came back to the hotel he had located them. I immediately got in a taxicab and had him take me out to an apartment where Mrs. Gertrude Hodgson lives; and when I got there Mrs. Gertrude Hodgson and her daughter-in-law Elsie were there. I told them I wanted to see Frank, and also their father and husband; so they got him over the telephone. We visited there for a few minutes, and finally Mr. T. P. Hodgson came in, and Frank Hodgson came in, and I told them what my business was. I told them what Robin Day wanted, and came to a settlement with them; and mentioned they owed Mr. Vinton and I, as the firm was then—

owed me personally for services performed; and we came to an understanding and agreement as to what it was. Then Frank Hodgson spoke up and said he didn't have the money, but he would pay us in sixty days, if we would just be patient. And I left there and went back to the hotel.

Q. How long were you there, have you any idea?

A. I imagine maybe half an hour; and I went back down to the hotel. I had invited Mr. and Mrs. Hogue to take dinner with me that night at the Hotel Butler, and we took dinner, and after dinner I spent the evening with them, up where they live there in Seattle.

Q. Did you see the Hodgsons any more?

A. I never saw the Hodgsons any more on that trip at all.

Q. Now there was a witness by the name of Gilliland who testified that he was present when Joe Brown was with you on the occasion of that visit, and that during the course of the conversation Mr. Gilliland was introduced to you, and you asked Mr. Hodgson—I think he said Frank Hodgson—if he, Gilliland, was one of his, Hodgson's men.

A. I never saw that man Glliland until after this case came up; never saw him in my life. (36-37)

That there was no truth in the testimony that the still operated on the Hood Canal had been purchased from a Constable or a Deputy Sheriff at Stayton

through him; that he didn't know the Constable at Stayton and never had any business there; that at no time did he buy, sell, deal in, or give away any still or stills;

With respect to the testimony of Moon and Grant that they observed him on April 30th with Joe Brown at Third and Couch Streets, Portland, he testified that he played golf on that day until 6:30 P. M.; that he and Shelton had some business in the office and they got there about 8:15 and worked in the office until between 11:00 and midnight; that after they got through, he drove Shelton to where he parked his car and then went home; that there was but one occasion when he and Joe Brown were down at Third and Couch Streets; that it might have been before or after April 30th but it was sometime along there. Joe Brown's wife had been taking up with him the matter of a claim for an Indian allotment; that he had more or less neglected it; that he had been in Salem on the case and on his way back to Portland he came by way of 82nd and Foster Road for the purpose of calling on Mrs. Brown; that they were having their evening meal and he gave her the information he had received from the Bureau of Indian Affairs; they were eating some kind of Greek olives that he liked and he asked Joe Brown where he got them. He stated at Malitas Bros. He further testified:

> So I says I think I will go down and pick some up. He says, if you wait a minute I will go with you; he says I have to go down town anyway; something about a car, he said, something; I don't know what it was now, I don't recall. So we got

in the car and drove down across the Ross Island Bridge, turned up Second Street to Couch, and pulled up alongside Maletis store maybe 25 or 30 feet from the corner of Third Street, and got out and went in the store. He introduced me to Maletis, then he went away. (43)

That after I made the purchase, I went out, waited around for Brown and pulled out. It was about 8:30 or 9:00 o'clock in the evening. That was the only time that he and Joe Brown were down there together.

That on July 14th, 1930, Mrs. Hodgson called him at the office and said there was a young fellow there from Linn County and his folks were in trouble and wanted to know if he could find out what it was all about. He couldn't go that day, but the next day he said he would try to go that night. So the next night he went there with his car to the Morris Hotel and picked up Frank Cameron and the Webb boy. It was about 10:00 P. M. when they got to Crabtree. The boys got out of the car and they went in to wake their folks up, while he remained in the car.

Q. Pardon me for the interruption, but did you know, up to the time you got there, of any trouble that these people were in, or what they wanted?

A. Not as concerns these people, except on what Mrs. Hodgson said that night up at the Morris Hotel, it seems that they had been operating—I understood they had been operating a still up there, the Hodgson's had.

MR. HELGERSON: Who had?

A. The Hodgsons had; that is, Frank Hodgson had, I beg pardon; I don't wish to do anybody any injustice. (46)

That thereupon he went into the house and there were gathered there Wm. Webb, Frank Cameron, Roy Cameron and E. L. Webb. They complained that Zielenski was trying to get them off the place, one of the reasons being that a still had been on the place; that there was then brought up the question of the officers having been there several times before and raiding the place, and that they had also been there several times after the raid. They said they had made a statement to the officers.

I told them you didn't need to talk to these officers if you didn't want to, but, I said, having talked to them you did the right thing to tell them the truth and all the truth; I said if I had been in their place I would have done the same thing; then I asked them—you understand I was up there representing these old folks, that is who I was looking after. (48)

That he then proceeded to tell them about the question of immunity; that if the officers had promised them that it amounted to nothing, but that the only way they could protect themselves was to be sure they were served with subpoenas and if they went before the Grand Jury to testify they would get immunity as a matter of course. In the course of the conversation, some question came up about some pictures that the officers had brought for identification.

But in any event the question came up about

identifying photographs or something, whether the officers that brought the photographs out—I don't know, but something came up about the question of identification, and then Mrs. Webb said that she couldn't possibly identify over one or two of them. Now, I says—now as far as the question of identification, I said, if you are positive in your identification, then you positively identify them; but, I said, if you are in doubt, then, I said, you should not positively identify them—if you are in doubt about it; if you think they are the same person, say you think so; if they look the same, or are dressed differently, or anything of that kind, tell them that. But if you are not positive, of course you shouldn't testify; but I said, in any event, when you got before the grand jury tell the truth and all of it. Now that is the substance of what happened there. (49-50)

That he did not know Vic Scholz; that he knew Rex Keene all his life, but he never did any business for him; that he never saw Gilliland until after the trial came up. As regards Rudolph Bouthellier, he testified:

A. I think I saw Rudolph Bouthellier probably once before this matter came up. I think along early in July, this case I was speakng about; you know I told you I think I had seen Hodgson some time before; I just can't connect just what it was; I think I saw Rudolph Bouthellier not under that name, but under the name of Randall, is all I remember.

Q. Ever transact any business for him?

A. No, never did any business for him. (51)

That he never saw Paul Richardson; that he never saw Carl Thompson until after the case came up, when he arranged about getting his bail; that he never saw Zielenski until after the indictment was returned; that he did not know LaJesse; that he had met Daskalos at McMinnville.

Witness was defending a Greek boy there while doing business in McMinnville and Daskalos was visiting the County Jail and he met him on occasion; that he transacted some civil business, a personal injury case for his wife; that he didn't know whether he ever saw Peterson or not; that he never had any business for Jack Kelly; that he once called him up to go to the Police Court and arrange bail for his brother and some people that had been arrested. That was all the business he had for him; that he never saw Paul Maras until he saw him arraigned in this case; that he did not Tom Alstott, James Mooney, James Hershey, John Doe Hahn, James Short, Pete Aperges or John Banakis; that he didn't know whether he knew Barrahan or not, though he thinks he lived in Woodburn at one time; that he never heard of Pete Andriatus or Emanuel Wolf; that the true name of Earl Trowbridge was Merl Daws; that he was born and raised at Woodburn and had known him all his life; that he had done some business for him when he lived in McMinnville; that he didn't know Mussorafite or Frank Bouthellier or B. Schatz; that he never saw Jelkin until the case came up; that he never conspired, confederated, or agreed with the persons named in the indictment or with any other

person to violate the National Prohibition Law, nor that he ever directed or assisted in the sale, manufacture, possession, or transportation of intoxicating liquor as charged in the indictment.

Upon cross examination, he testified that he went to see Jelkin in the County Jail after the latter's arrest in connection with the case, as the result of a telephone call. He wanted to see him about arranging for bail; that that was the first time he remembers ever seeeing him. It is possible he might have seen him at the Morris Hotel.

A. It just occurred to me when I saw him up there, that I had seen him at the Morris Hotel, and been introduced to him as Eli or something of that kind. That just runs in my mind, but I am not certain.

Q. That was where, at the Morris Hotel?

A. It was in the Hodgsons', Mrs. Hodgson's room, I think Mr. Hodgson's.

Q. Now, on the occasion of your visit to the Morris Hotel, on which visit was it that you think the possibility was that you met Mr. Jelkin there?

A. I think it was the time that I referred to, just before—a little time before Mrs. Hodgson called me up to go up to Crabtree; some little time before. I don't recall just when it was. If I met him, that is when it was, because I don't recall his being up there that night; but I was there with Mrs.—with the Webb boy.

Q. You had been up there to the Morris Hotel on several occasions, had you, to the Hodgson' room?

A. Well, on two or three occasions, in connection with that other matter, yes.

Q. In connection with what other matter?

A. That is just what I am trying to think about. I think it was in connection with something about Yakima, something about that I think.

Q. What was that about Yakima?

A. That was one of those fellows—I think that was—I don't recall his name, but there was one fellow had been arrested up there and thrown in jail, the city jail.

Q. One of these defendants?

A. Yes, I think it was one of these defendants.

Q. Was it Rudy Bouthellier?

A. Yes, that is who it was; I didn't handle that case. I simply talked over the telephone to a lawyer for him.

Q. You arranged, however, for Rudy Bouthellier's defense there at Yakima, did you?

A. No, I did not.

Q. What was this you said about talking over the telephone?

A. He had retained counsel, as I understood, talking to the attorney there. He had retained counsel at Yakima, a lawyer by the name of Bolen; these people had been in touch with Mr. Bolen, asking him what they could do. He had given him information if the boy would put up $500.00 cash bail, they would let him out, and then he could forfeit the bail and take his car. They wanted to know if they could rely upon it. That was the general nature of

the business. And I called up Mr. Bolen to verify it.

Q. Which one of the Hodgsons called you up in that connection, with that trip of Bouthellier to Yakima?

A. I would not say whether Frank Hodgson or Elsie Hodgson; I would not say; I saw both of them in connection with it. (56-58)

In connection with the car at Yakima, it seemed to him that Hodgsons said something to him about an Oldsmobile—it is possible that they might have said a Chrysler 77. The car was brought back by the boy that was arrested there; that it was Rudy Bouthellier although he didn't know that was his name until this came up; that he knew him by the name of Randall. This Yakima incident was early in June or July 1930; that Frank Hodgson on one occasion in January or February, 1929, arranged with him to take care of the defense of a boy by the name of Bertelsen who was arrested in Astoria for transporting liquor; that on one occasion he represented defendant Earl Trowbridge in Oregon City; that at that time he didn't know his name was not Trowbridge, the reason being that he didn't recognize him until afterwards; that he was charged with the possession of liquor, to which he pleaded guilty and was fined $750.00; that when he went to Seattle to collect his fee from the Hodgsons he got in contact with Joe Brown to assist him in locating the Hodgsons in Seattle. He knew the Hodgsons and Brown had some business dealings together.

Q. When did you learn that they were in Seattle?

A. I learned it from Joe Brown at the time I told you, when I called him up. I didn't know where they were.

Q. You have testified a while ago that you were going to Seattle on some other business, and you thought you would look the Hodgsons up while you were up there; so you got in contact with Joe Brown, to find out where they were. Now I am asking you when, prior to that, did you learn the Hodgsons were in Seattle?

A. Now I don't know whether I was going to Seattle and it came up, and I asked Brown about it, but in any event I got in touch with Brown, if he knew where they were; whether it was in connection with going to Seattle I asked him that; I may have asked him that some time before that, that is, where they were, if he knew. I don't recall just how that came up, but I know I asked him if he would go up and help me locate them. (67-68)

That at that time, Joe Brown was living on Foster Road. There was a garage next door, Mickey's garage. It is a part of the Joe Brown property. Merle Daws or Trowbridge was operating the garage; that when he and Joe Brown got to Seattle they went to the Butler Hotel. He didn't see Jack Gilliland there. About an hour after they got to Seattle they saw the Hodgsons. That they had a spring works on Broadway somewhere and thinks that is where Joe Brown got in touch with them to find out where they lived.

Q. Did you go the spring works?

A. I don't recall; no, not that time; I was there one time when I was going through to Vancouver.

Q. When was that that you were at the spring works?

A. Not when I was going to Vancouver; I was up at Vancouver, B. C., and up to Britizh Columbia on a fishing trip. I got back very late broke, got to Seattle, and didn't know anybody else; this was afterwards; I went to the spring works to see if I could find Hodgson and try to get some money.

Q. When was that?

A. It was when I was up on a fishing trip along in June or July, 1930. I spent ten days up at Forde's landing at Campbell River.

Q. How did you know them to have a spring works there on 48th Street, or whatever street it was?

A. He told me, Brown told me, about Mr. Hodgson; we had talked about the spring works. (72)

Now when you were called up there by the defendant Elsie Hodgson to the Morris Hotel, in connection with young Webb and young Cameron's difficulties, what was the conversation you had with Mrs. Elsie?

A. Well, as I recall it, it was over the telephone the first time, and she just said some folks were in trouble up at Crabtree, or up in Linn County, I think she said; the boy was there and wanted some help; and wanted to know if I would go up and see

what it was. She didn't tell me at that time what it was, over the phone, and when I really got up there the Webb boy didn't know what it was all about except he said Frank Hodgson had been operating a still up there, and the officers had raided it, or something of that kind.

Q. You said on direct examination that the Hodgsons had been running a still up there?

A. I wish to correct myself. Frank Hodgson ran the still. That is, with the men that were helping him.

Q. You and the defendant Elsie had some discussion about that at the time she first talked to you about young Webb and Cameron?

A. She told me they had been operating up there, her husband, and the officers had been there.

Q. This first conversation was on the 14th day of July, 1930?

A. This would be Monday; this date I understand would be Monday.

Q. I don't know whether it would or not.

A. I had a case Wednesday; I think was the 16th when I had that case in Salem; I think three days.

Q. You went up there the next night with these boys?

A. Yes, sir.

Q. Up to the Zielenski ranch?

A. Yes.

Q. And you went up there purely for the reason of helping these old folks out?

A. To tell the truth, I went up there to represent them, to take care of whatever trouble they were in; that was my understanding you see.

Q. Because Elsie Hodgson had asked you to?

A. She had asked me to.

Q. Did you ever get any fee for your late trip out there that night?

A. No, I never did. I got back from Mrs. Hodgson the expenses that I had been put to; that was paid back to me; that is all.

Q. Mrs. Elsie Hodgson?

A. Yes. (74-75)

That Mrs. Elsie Hodgson paid him $15.00 expense money; that he first became acquainted with Browns sometime in 1925 or 1926 and he got in contact with them through Robin Day. That he then started in doing most of their civil business for them; that he continued his work for them until they dissolved their partnership; that Joe Brown had gotten into the automobile business at Hubbard, and that when he did so he did it at the displeasure of his brother, Wm. Brown; that he thinks Joe Brown quit the garage business at Hubbard some time in the Fall of 1928; that the next business he attended to for Joe Brown was a personal injury case; that he had had considerable business for Bill Brown in the meantime; that the personal injury case was tried April 18th, 1929. The verdict was against his client for $500.00. That he took possession of the Richenbacher car a few days after the trial of that case; that it was transferred to him by Geraldine C. Brown, the wife of Joe Brown. She signed the certificate of title and a little

receipt from the Registration Bureau; that he gave the Certificate of Title back to them; that the new Certificate was issued in his name which he turned back to them and on May 9th, he endorsed it in blank and handed it over to them. Geraldine Brown was living at that time in Portland, somewhere near Foster Road and that while he don't recognize No. 5133 E. 68th Street, it was out there somewhere; that at the time he took the Richenbacher he don't recall that the legal title to it was in Zenophon Tringas. Zenophon Tringas is Wm. Brown. That he don't know anything about having transferred the Richenbacher to a man by the name of Wm. Hayes; that he don't know who he is and never heard of him; that he just turned the car back to Mrs. Brown, turning the papers back endorsed in blank on May 9th; that he took the car as security for his fees against Joe Brown who was broke and he didn't want the people who got the judgment jumping on him and taking away the last thing he could pay him out of. In doing so, he was trying to protect himself; that he don't know the day he had pickles and cheese at Joe Brown's home. It was early in the evening at their home on Foster Road around 61st or 62nd Street. It was early in the evening. He had driven there from Salem and when he arrived they were eating their dinner. He liked the things so well and Joe Brown said he would show him where to get it; that witness drove his own car, an Oakland Coach. He got down to Malitas Brothers about 8:30 or 9:00 o'clock in the evening. Joe Brown went in with him, but he wasn't in there for but a moment or two and went out. After witness had made his purchases he brought them back to

the car and Joe Brown came back and spoke to him. Joe Brown didn't go on with him. He had come there in his own car; that he went on and left him at 3rd and Couch. Altogether, he was down there about 15 or 20 minutes. All the dinner he had that night was the pickles and cheese he ate at the Browns' home. That he was down at this place once since the indictment was returned; that when he came out of Malitas Brothers and went to his car, Joe Brown came back and spoke to him and told him he was going up on 5th Street, whereupon witness went on; that he don't recall exactly where Joe Brown came from when he came back to his car. He don't know what date it was. It was some time aroung April in the Spring of 1930; that he once represented the defendant Daskalos in an automobile case. It was commenced by George Pipes and turned over to him after he had commenced it. It was about March 1st, 1930, that they had the trial. The case was entitled Ella Daskalos vs. Elizabeth Moore and Florine Ray. It was an action for personal injuries growing out of an automobile accident. The automobile belonged to Florine Ray. The automobile involved was a Hupmobile Sedan. It was a guest case. Mrs. Daskalos was riding as a guest in Florine Ray's car. In connection with the hearing before the U. S. Commissioner on October 8th, 1929, growing out of the arrest of the Fulmer ranch he offered to represent Clyde Ullman for the time being, and that later at the preliminary hearing, Mr. Shelton of his office represented him, and that later witness represented Clyde Ullman upon his plea in this Court.

That he doesn't remember that at that time on Oc-

tober 8th, 1929, in Salem, he had known Clyde Ullman or had ever seen him before. He knows now where Art Hines lives, on 57th or 59th Street off Sandy Boulevard, East Side; that he has been there but it wasn't prior to October 8th, 1929. At the time of representing Clyde Ullman on his plea before this Court in December, 1929, he didn't know that Clyde Ullman and Art Hines were the same person; that he appeared voluntarily before the Grand Jury at the time it was investigating this case and made a statement before that body and part of that statement concerned Hines and Ullman. At that time and on, to-wit: September 9th, 1930, he substantially made the following statement in the presence of U. S. Attorney, the Forman of the Grand Jury and others.

> That he was well acquainted with Clyde Ullman at the time he was arrested in connection with the seizure of the so-called Rickreall still in Polk county, Oregon; that he had known Clyde Uhlman for more than six years prior to that time; that Uhlman, however, was not his true name—that he—you didn't care to reveal his true name, as he is now and has been since that time respectable and not engaged in the violation of the law, and that he didn't want to do anything that would reflect upon him inasmuch as he (Uhlman) had decided to go straight. (19)

That he didn't know Clyde Ullman as Art Hines about 6 months prior to his arrest at the Fulmer ranch on October 8th, 1929. At the time he was before the Grand Jury he didn't know what it was all about and

was confused and he had him confused with another defendant in the case who is Anderson. At the time he made the statement he had already filed with Mr. Johngon, Government's Exhibit 40 called Petition for Remission or Forfeiture. The contents or working of that petition were written by him or in his office, as he recalls it. The information contained was given him by Mrs. Hines and the Taylor girl at the preliminary hearing in Salem. Up to that time when it was signed, which Was February 6th, 1930, he had known not Art Hines in person. He knew him by reputation and he thought about it later and saw where he had made a mistake before the Grand Jury. He was rather excited before the Grand Jury. The petition or application he had written at Mrs. Hines' direction was prior to this one. That was about December 29th. It was not signed by Art Hines in his presence. That he followed the same practice that he had with the other because he had such a difficult time locating Art Hines. He couldn't find him and the Prohibition Department couldn't find him and he thinks he followed the same practice. He possibly had him call witness on the 'phone and he might have taken that acknowledgment over the 'phone. The Jurat on Government's Exhibit 40 stating that Art Hines had subscribed his name and sworn to it before the witness was the ordinary affidavit on a complaint; that he doesn't recall whether he took the acknowledgment over the 'phone or in person; that he followed that practice a good many times, but it is the last time. The petition was filed shortly after he got back from San Francisco. He has copy of letter of transmittal dated February 6th, 1930,

addressed to Mr. Johnson. It was sometime after that that he found out that Hines and Ullman were one and the same person. He don't recall when that was. It was when he happened to go into a garage and as he was leaving Hines or Ullman gave him his card, and that is the way he got it. Then he understood a lot of things he didn't understand before. He had known him a long time, but not as Art Hines. That he went back there again to adjust his brakes. He doesn't know whether it was on Union Avenue or Grand Avenue. It was a considerable time after he had filed his petition.

Upon re-direct examination, he testified in relation to his testimony as to some claim that he had on behalf of one of the Browns against the Hodgsons. He referred to Joe Brown and it grew out of the sale of a cor to Frank Hodgson upon which Hodgson had failed to make a payment. Frank Hodgson is Elsie Hodgson's husband.

Upon re-cross examination, he testified that relating to the trip that he and Joe Brown made to Seattle that Joe Brown went up there with him for his accommodation. The claim that Joe Brown had against Frank Hodgson had been settled a long time before that.

Thereupon the defendant William Brown offered testimony in his behalf.

That the defendants, Joseph Brown, Rudolph Bouthellier and Frank Bouthellier, did not take the stand in their behalf, nor did they offer any evidence in their behalf.

That no other defendants, with the exception of

Walter Tooze and William Brown, testified in support of their respective behalfs.

That thereupon the following proceedings were had.

MR. GOLDSTEIIN: Let the record show that the defendant Joe Brown announced that he rested upon the motion for directed verdict at the close of the government's case, and at this time renews his motion to strike out all reference to the defendant Joe Brown which might have been made by some of the witnesses for the other defendants who chose to put in evidence on their behalf. That as far as Joe Brown is concerned, any reference thereto should not be binding upon him and should be disregarded by the jury.

Motion denied; exception saved.

MR. GOLDSTEIN: Now if the court please, on behalf of the defendant Joe Brown in view of the fact that all the evidence has closed, and in view of the many conflicting statements made by respective counsel, I am compelled at this time to renew my motion that I made for the defendant Joe Brown at the close of the case; as a motion for a directed verdict.

Motion denied; exception saved.

That thereupon, and prior to the argument and prior to the court giving his instructions to the jury, the defendant Joseph Brown, submitted the following instructions which he requested should be given:

I.

You are instructed to return a verdict of not guilty

as to Joe Brown on Count I, of the indictment, upon the ground and for the reason that evidence introduced is insufficient to charge the defendant, Joe Brown, as a party to the specific conspiracy alleged in said Count.

II.

Mere knowledge or passive cognizance of a conspiracy without co-operation or agreement to co-operate is not enough to constitute one a party to the conspiracy. There must be active co-operation and intentional participation in the transaction, with a view to a furtherance of the common design and purpose.

Wharton on Crim. Law, Page 1749.

III.

To put it differently, mere knowledge between alleged co-conspirators, that the other defendants were attempting to violate the law is not enough. Mere suspicion that the defendant, Joe Brown, was a party to the conspiracy would not be enough. There may be some suspicious circumstances and facts, which might seem to indicate that this defendant had knowledge of the criminal transaction, but, as I have already stated, mere knowledge alone, would not be sufficient. In order to bring the defendant, Joe Brown, within the condemnation of the conspiracy statute, he must, himself, do the act, or authorize it to be done, and a mere failure on his part to prevent another from doing it, would not be sufficient.

Marrash vs. U. S. 168 Fed. 226.

U. S. vs. McClarety, 191 Fed. 518.

IV.

If the only evidence in this case, so far as the defendant, Joe Brown, is concerned, is that he had knowledge that this liquor was being manufactured, sold, transported or possessed, in violation of the Prohibition Act, without any evidence that he conspired with another to effect such manufacture, sale, transportation or possession, then it would be your duty to find a verdict for the defendant, Joe Brown, on this Count.

V.

If the only evidence in this case, so far as the defendant, Joe Brown, is concerned, is that he participated in the sale, transportaton, or possession of intoxicating liquor, in violation of the Prohibition Act, without any evidence that it was effected or brought about through a prior agreement, conspiracy, or combination in which he took part, then it would be your duty to find the defendant, Joe Brown, not guilty, on Count I of the indictment, notwithstanding that he may have been guilty of the substantive acts themselves.

U. S. vs. Heitler, 274 Fed. 401.

VI.

While it is true that if one who, after a conspiracy is formed, with knowledge of its existence and the purpose thereof, joins therein and aids and participates in its execution, he becomes as much a party thereto from that time as if he had been an original conspirator, yet you must understand that one cannot be made a member of the conspiracy except by his conscious acts and by his knowledge of the formation of such a conspiracy

and his willingness and intention to participate therein. If, therefore, you should find that a conspiracy had originally been formed and that the defendant, Joe Brown, subsequently had done things which were the object of such conspiracy, yet he would not be guilty of this conspiracy charge unless in addition thereto you find that he consciously and knowingly entered into the conspiracy that had originally been formed, and that his acts were the result of a joint and corrupt concert of action.

VII.

The acts which are set out in Count I, as Overt Acts, must not be acts which are part of the conspiracy itself; they must be subsequent, independent acts, following a completed conspiracy. Therefore, I instruct you that as the combination of minds in an unlawful purpose is the gist and foundation of this offense, consequently if you are not convinced beyond a reasonable doubt that the defendants are guilty of such conspiracy, you would not be authorized to find them guilty under this count simply because of their participation in the Overt Acts, assuming you should so find. In other words, a defendant who is not a party to, or did not join in, the previous conspiracy, cannot be convicted simply on the Overt Acts.

U. S. vs. Cole, 153 Fed. 804.

U. S. vs. Hirsch, 100 U. S. 34.

VIII.

I instruct you that if you believe from the evidence, beyond a reasonable doubt, that two or more of these

defendants conspired to violate the Prohibition Act as I have heretofore defined, you would be justified in considering the acts of such co-conspirator, or statements made by him during the existence of such conspiracy, as acts and statements against all who participated in such conspiracy. But I further instruct you, if the conspiracy had already ended, by success or failure, then such statements or acts should not be considered by you against his co-conspirators, but are only admissible as against the person who committed such act, or made such statement.

IX.

Certain witnesses have been called in the course of the trial to testify as to their own participation in this alleged criminal transaction. While accomplices are competent witnesses, it is the duty of the court to warn you that their testimony must always be received with caution and weighed and scrutinized with great care. The jury should not rely upon it unsupported unless it produces in their minds the most positive conviction of its truth.

U. S. vs. Richards, 149 Fed. 454.

Holmgren vs. U. S. 217 U. S. 509.

X.

The testimony of a confessed accomplice is not to be taken as that of an ordinary witness of good character in a case, whose testimony is generally and prima facie supposed to be correct. On the contrary, the evidence of such a witness ought to be received with suspicion and with the very greatest care and caution and should not

be passed upon by the jury under the same rules governing other and apparently credible witnesses.

Ling vs. U. S., 218 Fed. 818.

Crawford vs. U. S., 212 U. S. 183.

XI.

In determining the guilt or innocence of the defendant, Joe Brown, you must be convinced beyond a reasonable doubt that he has committed the identical offense charged before you would be justified in finding a verdict of guilty. He has been indicted for a violation of the conspiracy statute, as set out in Count I of the indictment, and for nothing else, and his guilt must be established under that statute, or not at all. Until guilt is proven there is an absolute presumption of innocence, and this presumption of innocence continues with the defendant throughout the trial, and stands as sufficient evidence in his favor until from all the evidence you are satisfied beyond a reasonable doubt of his guilt. If you are not so satisfied it is your duty to aquit.

U. S. vs. Richards, 149 Fed. 454.

XII.

The presumption of innocence is an instrument of proof created by law in favor of one accused, whereby his innocence is established until sufficient evidence is introduced to overcome the proof which the law has created.

Wolf vs. U. S. 238 Fed. 906.

Coffin vs. U. S. 156 U. S. 458.

XIII.

While an offense may be established by circumstantial evidence, yet such evidence to warrant a conviction in a criminal case, must be of such a character as to exclude every reasonable hypothesis but that of guilt of the offense imputed to the defendant. If, in other words, the facts proved must all be consistent with the point to his guilt only, and inconsistent with his innocence. The hypothesis of guilt should flow from the evidence proved and be consistent with that of guilt. If the evidence cannot be reconciled either with the theory of innocence or with guilt the law requires that the defendant be given the benefit of the doubt and that the theory of innocence be adopted.

U. S. vs. Richards, 149 Fed. 454.

XIV.

Now, this is a criminal case. The defendants have entered a plea of not guilty, and that plea controverts and is a denial of every material allegation in the indictment. It imposes the duty upon the government to prove such allegations to your satisfaction beyond a reasonable doubt before you would be justified in finding the defendant guilty. In other words, it is not for him to prove himself innocent, or to put in any evidence at all on that subject. He comes into court clothed with a presumption of innocence. It is evidence in his favor and remains with him throughout the trial, until overcome by the testimony. It is the duty of the government to prove him guilty, and prove it beyond a reasonable doubt. The presumption of innocence is not a

mere fiction, but it is a thing of substance that should not be lightly regarded by the jury. It is of evidentiary value and is accorded by law protect the innocent from unjust and unfounded accusations.

XV.

It follows, therefore, that you have no right to draw any inference of guilt from the fact that the grand jury has returned an indictment against the defendant. It is not any evidence of guilt whatsoever, nor should it be so considered by you. The grand jury in presenting the indictment proceeds ex parte—that is, by hearing one side only, to-wit, such evidence as is presented by the United States Attorney, and without the presence of the defendant. The indictment, is merely an accusatory document designed to make a complaint against the defendant for having violated the law, and its function is to bring the party accused to trial before the court and jury. It proves nothing respecting guilt itself, and the action of the government must be maintained, if at all, by proof adduced at the trial.

XVI.

In a criminal case, the jury cannot base conviction upon mere probabilities, nor is it sufficient that the government prove its case by a mere preponderance of the evidence, but the law requires that before you can find any defendant guilty you must be satisfied of the guilt beyond a reasonable doubt. The burden of establishing such guilt rests upon the government to prove every material issue to your satisfaction and beyond a reasonable doubt, and unless the government has done so it is your duty to acquit.

XVII.

What is a reasonable doubt? It is a term often used, probably very well understood, but not easily defined. It is such a doubt as exists in the mind of a reasonable man after a full, free, and careful examination and comparison of all the evidence. It is such a doubt as would cause a careful, considerate, and prudent man to pause and consider before acting in the grave and most important affairs of life.

XVIII.

You are further instructed to acquit the defendant if on any reasonable hypothesis you can reconcile the evidence with defendant's innocence.

12 C. J. 639.

XIX.

If there is any reasonable hypothesis or theory of the evidence which is more consistent with innocence than guilt, then it is your duty to adopt it and act upon the hypothesis of innocence rather than of guilt. Because only in that way can you uphold and give to the defendant, as the law requires, the benefit of all reasonable doubt. As long as there exists in your mind a reasonable hypothesis or theory of the evidence consistent with innocence rather than guilt it cannot truly be said that you have reached a conviction beyond a reasonable doubt of the defendant's guilt, and your verdict should therefore be for the defendant.

XX.

I also instruct you that it is unfair and improper to consider anything you may have heard or read concern-

ing this case outside this court room to influence you in arriving at your verdict. Your verdict should depend upon the sworn testimony that you have heard here, and upon that testimony only. It appears that a number of articles were written concerning this case which might possibly have a tendency to detract from the testimony as here given under oath. If you have heard or read anythng about this case outside this court room it is your duty under your oath to disregard it entirely. It would be only unfair to the defendant that you should entertain any prejudice against him for something that you may have heard or read outside this court room. I therefore remind you of your duty under your oath and appeal to your conscience to consider only the evidence given in this case and none other. If, therefore, you honestly feel that the evidence as presented in this case is insufficient to convince you beyond a reasonable doubt of the guilt of the defendant, then it is your duty to return a verdict of not guilty, notwithstanding the fact that if you considered the statements in the newspapers your decision would have been otherwise.

XXI.

I also instruct you that your verdict must be based upon the guilt of innocence of this defendant on this charge and none other, no matter what your opinion may be concerning his guilt upon any other charge or offense. If, therefore, you honestly feel that the evidence as given in this case is insufficient to convince you beyond a reasonable doubt of the guilt of the defendant on this specific charge then it is your duty to return a verdict of not guilty,

XXII.

The defendant, Joe Brown, has not testified in his own behalf. I instruct you that his failure to testify in this case is in no degree to be imputed against him. He may rely entirely on the ability of the Government to make out a case against him, and when he, or his counsel, considers that no case is made and he does not go on the stand as a witness, that circumstance is to be wholly disregarded and is in no way to be to his prejudice. You must judge by the testimony given whether the accusation is made out or not. The burden of proof from the beginning, is upon the Government to establish before you the fact of guilt by credible tesitmony and beyond a reasonable doubt.

U. S. vs. Hart, 74 Fed. 733.

XXIII.

There is evidence in this case that one Moon and one Grant were hired by the Government and their expenses paid, for the sole purpose of procuring evidence against this defendant. I therefore instruct you that they are interested witnesses and you should carefully scrutinize their testimony in connection with all the circumstances proven.

40 Cyc. 2655.

XXIV.

Testimony of people who purchase or otherwise deal in liquor for the sole purpose of laying a foundation for prosecution should be considered with suspicion and distrust.

75 Atl. 861.

111 S. E. 933.

XXV.

If you believe that the defendant, Joe Brown, was induced by the importunity of the under-cover agents employed by the Government to violate the law, that is, if he did violate it, and if through their inducement, he sold the liquor, then you should return a verdict of not guilty, as it is against the policy of the United States Courts to sanction a conviction in any case where the offense was committed through the instigation of public agents.

Peterson vs. U. S., 255 Fed. 235.

XXVI.

During the course of the trial, evidence was admitted of statements made and acts done by various defendants not in the presence of other defendants. In this connection, I instruct you that such statements made and such acts done should not be considered by you against the defendants not affected, unless you are satisfied, beyond a reasonable doubt, that such statements were made and such acts were done during the pendency of the conspiracy and in furtherance of the common object and that such other defendants were members of such conspiracy.

XXVII.

During the course of the trial, evidence was admitted of statements made and acts done by certain defendants not in the presence of other defendants and prior to the time that such other defendants entered the conspiracy if you should find that they did so, and without knowledge of the prior formation of such con-

spiracy. In that connection, I instruct you that such statements made and such acts done should not be considered by you in any respect as against those defendants who entered the conspiracy if they did so subsequent to the time when such statements were made and such acts were done, and subsequent to their knowledge of the existence of such prior conspiracy.

XXVIII.

The defendant, Joe Brown, is charged with being a party to a conspiracy to violate the Prohibition Law, and with nothing more. He is not charged with, nor is he on trial for, the substantive offense of manufacturing, selling, transporting, possession or dealing in Intoxicating Liquor. Therefore even though you may believe that Joe Brown is guilty of manufacturing, selling, transporting, possessing or dealing in intoxicating liquor, yet, even so, you must bear in mind that he is not charged with, nor on trial for, committing such offenses, but with the crime of conspiring with others to commit such offenses, and if the prosecution has failed to convince you beyond a reasonable doubt that Joe Brown is guilty of such conspiracy, it would be your duty to acquit him, notwithstanding you may believe him guilty of committing the other offenses, for as I have pointed out to you, he is not charged with, nor on trial for such other offenses.

That the Court, however, instructed the Jury, as follows, which said instructions are given in full.

That thereupon the Court instructed the jury as follows:

Gentlemen of the jury:

In view of the large number of requests for instructions which have been placed before me, and owing to the nature of this case, and the scope which the evidence has taken, I find it necessary to advise you and to extend my instructions somewhat beyond the ordinary length, and therefore I trust you will listen with some degree of patience.

Before you were called upon to serve as trial jurors in this case, the Grand Jury returned against these defendants the indictment charging them with the crime of "conspiracy," as set forth in Count One of the indictment, and in the remaining counts of the indictment with the violations of certain provisions of the National Prohibition Act, which have been explained to you. The indictment is in itself no proof of guilt. It is a mere formal accusation made by the Government against the defendants, charging them with the commission of certain crimes. The Government thus advised them in advance of their trial of the issues they must meet in order that they might prepare their defense, and hence they are not to be prejudiced, nor are you to be influenced by the mere fact that they have been indicted.

After you were sworn, you were advised by the Government, through its representative, the District Attorney, in some detail of what the Government expected to prove, and what the nature of the proof would be. This statement, like the indictment, is not to be considered as evidence. It was made merely for the purpose of enabling you to better understand the testimony which would follow, and is therefore now no longer of any

value to you. You have heard all of the evidence, and when you find your verdict it should be upon the evidence and that alone.

After the evidence was closed, counsel for the Government and counsel for the defendants made their respective arguments to you. Under the law these arguments have a legitimate place in the trial of a cause, and are often of great assistance to a jury in analyzing and giving proper weight to the evidence. It is the province of counsel to suggest, but after all, it is for you to consider and decide the weight and significance to be given to any particular portion or all of the evidence. Not even the court can deprive you of the right or relieve you of the responsibility of determining the facts and passing upon the weight and credibility of the testimony. That is for you exclusively. When making their arguments it not infrequently becomes necessary for counsel to advise the jury what, in their judgment, the law is, in order that they may properly analyze and group the evidence in support of their contentions, but it is always to be understood that such statements of the law are not binding upon the jury and that the jury must look to the court for the law. The defendants now on trial have entered their pleas of not guilty. That means that they deny all of the counts or charges in the indictment.

Now when you go to your jury room, and indeed during your entire deliberations, you will bear in mind and be governed by the general rule that the defendants, and each of them, in this case are presumed to be innocent of the offenses charged until their guilt is proven

by competent evidence beyond a reasonable doubt. The burden is therefore upon the Government to prove the material allegations of the indictment beyond a reasonable doubt.

Now the phrase "reasonable doubt" cannot be defined with absolute accuracy, but by some explanation perhaps I can assist you in understanding your duty and obligation in that regard. A reasonable doubt is just such a doubt as the term implies, and is one for which you can give a reason. It means a doubt which is reasonable in view of all the evidence and growing out of the testimony in the case, or the lack of testimony. So generally, I may say to you that after you have fairly and impartially considered all of the evidence, with a sincere and earnest effort to reach a conclusion, if you can candidly say that you are not fully satisfied of the defendants' guilt, if you still entertain such a doubt as would cause you to hesitate in the most important affairs of life, you have a reasonable doubt and your verdict should be for the defendants. But, upon the other hand, if, after an impartial and earnest consideration and comparison of the evidence, your minds are in such a condition that you can truthfully say that you have an abiding conviction that the charge is true, then you have no reasonable doubt, and it becomes your duty to so declare by your verdict.

Now, bearing in mind these general principles, you should at the outset fix closely in your minds the exact offenses with which the defendants are accused and of which you are to declare their guilt or innocense, for, as I shall have occasion to explain to you, the defendants

are now on trial for the alleged offense of conspiracy as set forth in Count One of the indictment, and certain of the defendants for the alleged offenses of violations of certain provisions of the National Prohibition Act, as set forth in the remaining counts of the indictment.

While the defendants are jointly charged, each stands before you in his or her own right, and you will consider the evidence as bearing on the guilt or innocence of each of the defendants separately. You cannot find one guilty because you believe another to be guilty. Neither should you acquit one because of finding another to be innocent. It is your duty to consider and apply the testimony to each defendant separately and to determine the guilt or innocence of each defendant as the result of so considering and applying the evidence to him or her. It is not at all important that some of the defendants named in the indictment are not presently on trial. It is possible to try, and the law permits, a number of defendants, alleged to be conspirators, to be tried separately.

The indictment contains 18 charges or counts, the first one of which charges that the defendants entered into a conspiracy in which it is alleged that they did, on or about the 12th day of October, 1927, and continuously from that date to on or about the 15th day of September, 1930, wilfully, unlawfully, feloniously, and knowingly, conspire, combine, confederate, and agree together to commit certain offenses against the United States, that is to say: to unlawfully, wilfully and knowingly violate an Act of Congress known as the National Prohibition Act, in that they would, in the Counties of

Multnomah, Clackamas, Polk, Marion, Linn, Yamhill, Washington, Columbia, Clatsop, and Tillamook, and divers other counties to the Grand Jurors unknown, in the State of Oregon, and in the Counties of King, Mason, and Yakima, in the State of Washington, wilfully, knowingly, and unlawfully manufacture, sell, barter, transport, possess, deal in, deliver, and furnish intoxicating liquor.

This indictment charges a single continuing conspiracy against the defendants therein named to have been in existence from on or about October 12, 1927, and continuously and at all times thereafter up to and including on or about September 15, 1930, and before a conviction can be had the Government must show to your satisfaction that such a conspiracy existed substantially as charged in the indictment against the defendants.

This indictment further alleges 14 overt acts, and as I am going to allow you to take the indictment to the jury room, you will be able to determine therefrom what the overt acts, as alleged, were.

Now Count Two of the indictment charges Frank W. Hodgson, Elsie Hodgson, B. Schatz, Earl Trowbridge, Rex Keene, and John Gilliland, defendants, with the substantive offense of manufacturing intoxicating liquor in the County of Marion, State of Oregon, from on or about the 8th day of November, 1929, until on or about the 20th day of December, 1929. The defendants who are charged under this count and are now on trial, are Elsie Hodgson and Earl Trowbridge.

And Count Three of the indictment charges, from on or about the 12th day of May, 1930, until the 7th day

of July, 1930, the defendants, Frank W. Hodgson, Elsie Hodgson, Paul Richardson, Rudolph Bouthellier, Frank Bouthellier, Rex Keene, Carl Thompson, and W. O. Zielenski, with the manufacture of intoxicating liquor in Linn County, Oregon. The defendants who are charged under this Count and are now on trial, are Elsie Hodgson, Rudolph Bouthellier, Frank Bouthellier, and Carl Thompson.

And Count Four of the indictment charges, from about the 8th day of July, 1930, to on or about the 26th day of July, 1930, the defendants, Frank W. Hodgson, Rex Keene, Paul Richardson, and John Gilliland, with the manufacture of intoxicating liquor in Marion County, State of Oregon. None of the defendants who are charged under this Count are now on trial.

And Count Five of the indictment charges, on or about April 20, 1930, the defendant, Gus Daskalos, in the County of Clackamas, State of Oregon, with the unlawful possession of intoxicating liquor. He is now on trial.

And Count Six of the indictment charges the defendant James Short, on or about the 21st day of April, 1930, in the County of Multnomah, State of Oregon, with unlawfully having in his possession intoxicating liquor. He is now on trial.

And Count Seven of the indictment charges the defendant, Wilford LaJesse, with unlawfully having in his possession intoxicating liquor at Clatskanie, State of Oregon, on or about the 25th day of April, 1930. He is now on trial.

And Count Eight of the indictment charges the de-

fendant, M. C. Barahan, with having unlawfully in his possession intoxicating liquor on or about the 25th day of April, 1930, at Westport, in the State of Oregon. This defendant Barahan has been dismissed and you will not consider this Eighth Count, or any of the other counts as to him.

And Count Nine of the indictment charges the defendant, Pete Aperges, with unlawfully having in his possession intoxicating liquor on or about the 29th day of April, 1930, at Astoria, in the State of Oregon. This defendant Aperges is not now on trial, and you will not consider this, nor any of the other counts in the indictment against him.

And Count Ten of the indictment charges the defendant, Paul Maras, with unlawfully having in his possession intoxicating liquor on or about the 30th day of April, 1930, at Portland, in the State of Oregon, and I will state to you, in regard to the defendant Paul Maras, he has entered his plea of guilty to this indictment, and therefore you are not to consider this Count Ten, nor any of the other counts in the indictment as to him.

And Count Eleven of the indictment charges the defendant, John Doe Hahn, with unlawfully having in his possession intoxicating liquor on or about the 1st day of May, 1930, at Portland, in the State of Oregon. This defendant is not now on trial and you will not consider this Count nor any of the other counts of the indictment as to him.

And Count Twelve of the indictment charges the defendant, Palmer Peterson, with unlawfully having in his possession intoxicating liquor on or about the 11th

day of April, 1930, at Portland, in the State of Oregon. This defendant Peterson has been dismissed, and you will not consider any of the counts in the indictment as to him.

And Count Thirteen of the indictment charges the defendant, James Hershey, with unlawfully having in his possession intoxicating liquor on or about the 8th day of April, 1930, at Portland, in the State of Oregon. This defendant Hershey is not now on trial, and you will not consider any of the counts in the indictment as to him.

And Count Fourteen of the indictment charges the defendant, John Banakis, with unlawfully having in his possession intoxicating liquor on or about the 29th day of April, 1930, at Astoria, in the State of Oregon. This defendant is not now on trial, and you will not consider this Count, or any other count in the indictment, as to him.

And Count Fifteen of the indictment charges the defendant, Dominick Mussorafite, with unlawfully having in his possession intoxicating liquor on or about the 15th day of June, 1930, at Portland, in the State of Oregon. He is now on trial.

And Count Sixteen of the indictment charges the defendant, Jack Kelly, with unlawfully having in his possession intoxicating liquor on or about the 17th day of April, 1930, at Portland, in the State of Oregon. He is now on trial.

And Count Seventeen of the indictment charges the defendant, Tom Alstott, with unlawfully transporting intoxicating liquor about the 17th day of April, 1930,

in Multnomah County, State of Oregon. This defendant Alstott is not now on trial, and you will not consider this count, or any other count of the indictment, as to him.

And Count Eighteen of the indictment charges the defendant, James Mooney, with unlawfully having in his possession intoxicating liquor on or about the 20th day of April, 1930, at Portland, in the State of Oregon. This defendant is not now on trial, and you will not consider this count, or any other, as to him.

I think, Gentlemen, I have made clear to you the allegations in this indictment concerning the 18 counts relating to the charges of conspiracy, and of the alleged violations of the National Prohibition Act.

The provisions of the law upon which Count One of the indictment is based is a general statute of the United States, having no particular relation to the National Prohibition Act. It is of a general character, and has been upon the statute book for a great many years. In substance, it declares that: If two or more persons conspire to commit any offense against the United States, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiray shall be punished as the statute prescribes. You will see that it is not necessary that they all perform an overt act. If any one of them performs an overt act they will become prosecutable for entering into the conspiracy; if it is done for the purpose of consummating the object of the unlawful combination, that is, the conspiracy, then all of the conspirators become prosecutable and punishable. Two questions always present them-

selves. Did two or more persons so agree together to do the unlawful thing, that is, conspire to commit an offense against the United States, and did one of them take some step looking to the accomplishment of the unlawful purpose? If so, the offense of conspiracy is completed and punishable, even though the object of the conspiracy is never attained. Your inquiry, therefore, should be, did the defendants conspire together, and if so, did they thereafter, with the view of carrying out the object of such conspiracy, do one thing toward such end? If they did so conspire together and take a single step to that end, that is, do any act to effect the object of the conspiracy, they would all become guilty and punishable for the offense of conspiracy.

A conspiracy, Gentlemen of the Jury, is a corrupt agreement or combination between two or more persons to commit an offense or offenses against the United States. This corrupt agreement or combination is the gist of the offense, but the performance of one or more of the overt acts, charged in the indictment, to effect the object of the conspiracy is necessary to make the offense indictable and punishable under the statute.

By the expression "an act to effect the object of the conspiracy", commonly called an overt act, is meant an act done by one or more of the conspirators, subsequent to the formation of the corrupt agreement or combination and during its existence, for the purpose of carrying such agreement or combination into effect. The mere corrupt agreement or combination alone is not sufficient to constitute an offense under this statute, but subsequent to the formation of said corrupt agreement

or combination and during its existence, one or more of the conspirators must have done or committed some additional act, charged in the indictment, aimed at the accomplishment of the unlawful purpose and tending to carry into effect the unlawful enterprise.

You will observe, as I have said, that the Government and the grand jury have in this indictment charged 14 overt acts. It is not necessary that you find all of them were performed, but it is necessary that you find that at least one of the 14 overt acts charged was done, and done with the intent to accomplish the purpose of the conspiracy, and subsequent to, and are independent acts of a completed conspiracy, before you will be warranted in finding any of the defendants guilty. You will bear in mind that before you can find the defendants or any of them guilty, under this indictment, of the charge of conspiracy, you must first find that there was an unlawful conspiracy as charged.

I further say to you that it is necessary, in order that there be a conspiracy, that in some way there came to be a meeting of the minds, a common understanding to perform the unlawful thing. But it is wholly unimportant as to how that understanding is reached. It may be a mere concert of action, or it may be part tacit and in part express. It is sufficient only that there be a common understanding to do the unlawful thing. However, that is not to say that that understanding is to be reached in any particular way, because it is very rare indeed that an agreement of this kind, that is, an unlawful conspiracy, is evidenced by a formal written agreement. Conspirators do not get together and sign

their names to a writing, as you would if you were contracting to sell a piece of property to someone who was agreeing to buy it for any innocent purpose. You can hardly expect to find a written agreement among conspirators. Moreover, it isn't necessary that such agreement be reached by any express words. Conspirators do not always express to each other their common purpose. Sometimes there are conspiracies that reach out so as to include persons, some of whom have never seen the others at all, or may never have heard of them. The question is, did the alleged conspirators, by words, or by some other means, come to a common understanding that they would do the unlawful thing. That is all that is necessary, but that, Gentlemen, is necessary.

The only object of the claimed conspiracy which you may take into account in arriving at your verdict in this case is the object alleged in the indictment, namely, that the parties conspired to violate the National Prohibition Act in the respects enumerated and set forth in the indictment.

So as to the proof of the unlawful combination, or agreement, or understanding, called the conspiracy, that is made by either direct or circumstantial evidence. It is not very often that it can be made by direct evidence, and so the evidence is permitted to take a rather wide scope, for the purpose of enabling you to reach a conclusion as to whether or not there was such an unlawful understanding, and here you will take into consideration all of the facts in the case.

I further say to you that if two or more persons set on foot an unlawful conspiracy, that is, a conspiracy

to commit an offense against the United States, and if another persons learns of that, knows of it, and with such knowledge knowingly contributes assistance to the accomplishment of the unlawful thing, he then joins himself to the conspiracy and becomes a co-conspirator without any agreement other than the understanding that is implied from the fact that, with knowledge that two or more persons were about to commit an offense against the United States, he knowingly and willingly lends assistance—the assistance may be very small or large—but anyone who knows that a conspiracy is being or has been set on foot, and is being carried out, and with such knowledge wilfully contributes to the end of the conspiracy, becomes a member of the conspiracy and becomes chargeable equally with those who may have originated the unlawful scheme.

Now the mere passive acquiescence on the part of one would not sustain a charge of conspiracy, because a conspiracy is the result of a conscious act on the part of an individual to participate with someone else in the violation of a law. In other words, a purpose of some kind in the agreement or understanding, so that a mere passive acquiescence, if one stood by, not participating or not being a party to any agreement or understanding, either express or implied, while someone violated the law, that would not be sufficient to justify the conviction of the individual as a co-conspirator.

If you find from the evidence beyond a reasonable doubt that a conspiracy existed as charged in the indictment, then the acts and declarations of each party to such conspiracy, done or made in furtherance of the

agreement, design, and purpose of carrying the criminal enterprise into effect, are, in contemplation of the law, the acts and declarations of all the parties to the conspiracy and are binding on all such parties. But for the purpose of establishing the existence of the conspiracy, or the connection of any defendant with it, the statements and declarations of each defendant must be confined to the defendant making them, and no other defendant is bound by such statements or declarations, and they must have been made before the conspiracy had already ended.

My attention, Gentlemen, is called to the status of six of the witnesses and the conditions under which they testified. It is my duty to instruct you in regard to them. If you believe the testimony of the witnesses John Gilliland, Emmons Jelkin, Roy Cameron, E. L. Webb, Wm. Webb, and Albert Welter, and that they were implicated in any of the alleged offenses and were carrying it out, then they were co-conspirators, and they would have the status here as witnesses or accomplices, as it is sometimes stated, with the defendants. If you believe the testimony of the Government that these men were accomplices with the defendants, or with either of them, then their testimony is to be scrutinized with care and received with caution, because of the conditions under which they give testimony. That does not mean, however, that you can arbitrarily decline to believe them any more than you would arbitararily decline to believe a witness who is interested for some other reason. You are simply cautioned to scrutinize their testimony with care and caution, and give to it such weight as you think it may be entitled to.

These people referred to as accomplices, and all the participants in this alleged conspiracy, and offenses charged in the indictment who have testified here in obedience to subpoena, are immune from prosecution for these offenses. The prohibition law provides that no person shall be excused from testifying because his testimony would incriminate himself; but if he does testify in obedience to subpoena, he cannot be prosecuted for any of the matters or things concerning which he testified, but may be for perjury.

Sometimes it is necessary for the Government, in uncovering crimes of the most serious character, to use the testimony of accomplices, those who turn states evidence, as it is sometimes put, and were it not for such testimony, sometimes it would be impossible to bring others who are guilty to justice. So that here you will weigh the testimony of these six witnesses in the light of the suggestions I have made to you, scrutinize it with care and caution. Under the law accomplices are competent witnesses and it is your duty to consider their testimony. It should, however, as I have said, be received with caution and scrutinized with care. You should test its truth by inquiring into the purposes or motives which prompted it, and to what extent, if any, it may have been colored or warped. However, the weight and value to be given such testimony is exclusively within the province of the jury. An accomplice is one who aids, abets, or is connected with another in the commission of crime.

I will say to you further that, if you find from the evidence that any of the defendants named in the in-

dictment, from on or about the 12th day of October, 1927, and continuously to and at all times thereafter up to and including on or about the 15th day of September, 1930, being the time charged in Count One of the indictment as to when the alleged conspiracy was in existence, was arrested and did not after such arrest do some act in furtherance of and to effect the object of the alleged conspiracy, then any and all acts, statements and conversations of any of such alleged conspirators done and made after such arrest would not be binding upon them, nor should you consider them as against such defendants, or be binding upon any of the defendants who did not thereafter perform some act in furtherance of and to effect the object of the alleged conspiracy.

I think I should say to you, gentlemen, the mere purchase of intoxicating liquor would not of itself constitute a crime, but the purchasing and receiving intoxicating liquor from persons, knowing them to be engaged in a conspiracy to violate the National Prohibition Act, would render the person so purchasing and receiving liquor, if received in aid of the conspiracy, a co-conspirator and equally guilty with other conspirators.

Now the indictment in Counts Two to Eighteen inclusive, charges direct violations of the National Prohibition Act, which act denounces and defines it to be a criminal offense for anyone to manufacture, transport, or possess intoxicating liquor. Such manufacture, transportation, and possession of intoxicating liquor must be a conscious and knowing one.

The defendants Walter L. Tooze, Jr., and Wm. Brown, have exercised the privilege conferred upon them by law and have testified before you, and you should give to their testimony such weight as under all of the circumstances it is entitled to. You are not permitted to reject their testimony merely because they are defendants, but in weighing it and in determining to what extent you shall give it credit, you should apply to their testimony the same tests you do to that of any other witness, and in weighing their testimony you may consider the interest that they naturally have in the result of this trial.

Some of the defendants in this case have not taken the stand and testified. Their failure to do so will not permit you to draw any inference that they are guilty. They have a right to submit the case upon the testimony of the Government if they desire, and claim it is insufficient, as they do in this case, or they may take the stand and testify, but if they do not take the stand and testify you will draw no inference of guilt from that fact, but determine the cause from the testimony that has been introduced and from all the circumstances which the evidence discloses in this case.

Some of the defendants are not now on trial and some of them have been acquitted. They have been acquitted by order of the court. Others have not been apprehended, but the defendants whose cases are now before you for your consideration are all named in the form of verdict which will be given to you in the jury room.

And in view of the suggestion made in the argu-

ment, the mere fact that other persons are not being prosecuted in this indictment, does not exonerate these defendants of the charges set forth in the indictment, if you find that the defendants now on trial did commit the offenses, or any of them, charged in the indictment.

I should call your attention to the fact that the Court overruled certain motions for a directed verdict made on behalf of the defendants now on trial. You are not to assume from that that in the opinion of the Court the evidence in this case was sufficient to justify a verdict of guilty. That motion simply called upon the Court to determine as a matter of law whether there was sufficient evidence to take this case to the jury. The Court has no right to pass upon a disputed question of fact. It has no more right to do that than you have to undertake to determine questions of law. The result, as far as the facts in the case are concerned, when there is evidence tending to support the contention of the parties, rests exclusively with the jury, and the responsibility rests with that body and not with the Court. So that anything the Court may have said or any intimation that may have come from the Court during the progress of this trial as to any disputed question of fact, or as to the testimony of any witness, or as to the credibility of any witness, is to be disregarded by you unless it conforms with your own views.

The credit of a witness may be impeached by proof that he has made statements out of court contrary to what he has testified on the trial. If you believe from the evidence that any witness has made statements out of court at variance with their testimony given in this

case, regarding any material matter testified to by such witness, then the jury may totally disregard his testimony except insofar as it has been in your judgment corroborated by other credible evidence, or by facts and circumstances proven on the trial which entitled it to credence. In all attempts at impeachment of a witness it is for you to say whether or not such attempt has been successful.

When the question of identity of persons arises in a case, the mere identity of names is not sufficient, but the evidence must go further and show clearly by other facts and circumstances, taken in connection with the name, the identiry of the persons referred to.

A further principle of law is that in regard to the evidence given of the defendant Wm. Brown's character, as being an upright, law-abiding citizen, this is always admissible in behalf of a defendant accused of crime; but such good character, if proven, is not of itself alone justification or excuse for committing a crime, if any crime has been committed. If you believe from the testimony that prior to the time of the alleged offenses for which the defendants are now on trial, the defendant Brown bore a good reputation in the community where he resided for being an upright, law-abiding citizen, that is a circumstance in his favor which you will consider together with all of the facts and circumstances in evidence. It is competent testimony and you should take it and weigh it and give it such weight as appeals to your best judgment.

Referring to the testimony of Moon and Grant, Government witnesses, I will say that it is proper for

persons engaged by the Government in detecting the commission of crime, to go about "under cover," as it is sometimes said, that is, unidentified, dressed in different ways, assuming to be engaged in different occupations, and where they suspect that liquor is being sold or manufactured, or in the possession of one, in violation of the law, to go to the suspected person and propose a violation of the law by asking him for liquor, soliciting him to sell liquor, or assisting him in the delivery of liquor. That is entirely proper. You have heard them testify; you noticed their appearances on the witness stand, and it is for you and you alone to say what weight is to be given to their testimony. Now they are what is called or has been designated as under cover agents, that is, they were engaged in the business of trying to detect people who were suspected of violating the prohibition law. As you very well know, the liquor business is an outlaw business and it is prohibited by statute.

I think, Gentlemen of the Jury, I should say to you again that in regard to the objection made during the course of the argument by counsel for the defendant Tooze, as to a reference made by the district attorney in his closing argument, when, in referring to the still that was placed in the barn at Stayton and was thereafter removed and had been stolen, although the District Attorney said at the time he did not say that any of the defendants had stolen the still, there is no evidence in the record showing that any of the defendants had stolen that still, and you should not draw any inference therefrom that any of the defendants had stolen that

still, nor allow the reference made to prejudice you against any of the defendants, and you should disregard it. You will remember that I called your attention to this at the time the objection was made.

Criminal offenses are very often proven by circumstantial evidence, as it is called. If the circumstantial facts, after they are proven, convince you beyond a reasonable doubt of the truth of the charge, then you should convict the same as if you were convinced to the same degree by direct evidence. In considoring circumstantial evidence, if the circumstances can be reconciled with the theory of guilt and at the same time may be recolciled with the theory of innocence, it is your duty to acquit the defendants. The circumstances taken as a whole must be not only consistent with the theory of guilt, but must be inconsistent with the theory of innocence.

There is evidence in this case that the defendant Tooze is an attorney at law and represented certain of the persons named in the indictment in connection with judicial proceedings. I will say to you that it was his right and duty as an attorney to represent such persons in a professional capacity and to perform such services in the usual professional capacity as an attorney. The right and duty of an attorney, under the law, is to advise and represent his client within the provisions of the law. He stands before the law the same as anyone else.

You should be slow to believe that any witness has wilfully testified falsely, but if you do conclude that anyone has so testified, that is, has wilfully testified

falsely to a material matter, not merely being mistaken, you will be free to disregard all the testimony of such witness, except in so far as it may be corroborated by the testimony of other credible witnesses or the circumstances in evidence, and this applies to all witnesses in the case.

Reference has been made during the trial as to witnesses having talked to counsel in the case. I will say to you that it is perfectly proper for counsel either for the Government or for the defendants to talk with witnesses in advance of when they may be called to testify, as that enables them to understand what the witnesses may know, so that they may intelligently question them.

Upon you exclusively rests the responsibility of determining the issues of fact, and it is also within your province to judge and pass upon the credibility of the witnesses and the weight to be given to their testimony, and in so doing you may consider the feelings and interest of the witnesses, if they have any, which is always an important consideration; their bias or prejudice, if any is shown; the opportunity they have of seeing, knowing and recollecting the facts about which they have testified; the reasonableness or unreasonableness of the story told by them, and all the evidence and facts and circumstances proved tending to corroborate or contradict such witnesses, if any such appears. You have had the opportunity of seeing them and of observing their demeanor and their manner of testifying. The interest which a witness may have in the event of a controversy concerning which he testifies is always an important consideration, for where there is a strong

personal interest, the temptation is correspondingly strong to withhold or pervert the truth.

When you retire to your room to deliberate you will select one of your number as foreman who will sign your verdict for you when it is agreed upon, and represent you as your spokesman in the further conduct of this case in court.

Your verdict you understand is to be unanimous, form of which will be presented to you. You will observe that there is a blank space left in this form, in which you will insert the word guilty or not guilty, to conform to the conclusion you reach. You may retire with the bailiff.

That at the close of the court's instructions to the jury and before the jury had retired and in their presence, the following proceedings were had:

MR. GOLDSTEIN: If the Court please, we desire the record to show that we make certain exceptions in the presence of the jury, and before they retire.

On behalf of Joe Brown, and such other defendants as may be affected thereby, we desire the record to show the following exceptions to the instructions as given by the court:

First, as to the instruction given by the court defining a reasonable doubt, insofar as it conflicts with the requested instruction presented to Your Honor before the argument, and insofar as it may be at variance therewith or in derogation thereof.

Second, we desire to note an exception to the

court's instruction with respect to defining or explaining what is essential to the proof of the conspiracy count in the indictment.

Third, we take exception to what, at least I construe, in the nature of an argument rather than an instruction to the jury, upon the method or manner as to how conspiracies are sometimes reached.

Fourth, we take exception to your Honor's instruction as to the explanation or definition of the specific or particular conspiracy charged in this count in the indictment.

Next, we take exception to your Honor's instruction as to the effect of alleged conspirators' entering into a conspiracy after its formation.

Next, we take exception to your Honor's instruction as to the effect of statements of several of the defendants when not made in the presence of the particular defendant sought to be affected thereby.

Next, we except to your Honor's instruction as to accomplices' testimony, how it should be considered and applied, insofar as it may be at variance with the particular requested instruction submitted to your Honor at the opening of the arguments.

Next, we specifically note an exception to what I, personally, deem to be an argument rather than an instruction as to the need of the Government for accomplices' testimony.

Next, we take exception to your Honor's instruction as to purchasers of liquor knowing of the

existence of a conspiracy—that they could be considered as conspirators if they knew of its existence and a purchase was made with respect to such conspiracy.

Next, we particularly and specifically note an exception to your Honor's instruction, to what I deem and consider an argument as to the propriety or necessity of the Government for the use of undercover agents, and particularly I make an exception, insofar as it may apply, with respect to the undercover agent Grant, who, the testimony indicated, was actually engaged in the bootlegging business at the time of his employment.

Next, we desire to note an exception to your failure to give our theory of the case as to the existence of a number of alleged conspiracies at variance with the one charged in the indictment, and because of the nature of the objections urged throughout the trial, and in particular at the time of our motion for a directed verdict and reliance therein, in your Honor not elaborating or explaining in more detail as to our theory that there is more than one conspiracy concerning which testimony has been tendered to establish, which would be at variance with the specific indictment charged.

And then we desire to note an exception to your Honor's ruling to give requested instructions 1 to 28, inclusive, as requested by the defendant Joe Brown, insofar as they may not have been given by your Honor, or if given, have been in conflict or at variance therewith.

Exceptions allowed.

ORDER SETTLING BILL OF EXCEPTIONS

And now, because the aforegoing matters and things are not of record in this cause, I, Charles C. Cavanaugh, the Judge who tried the above entitled cause, in the above entitled court, do hereby certify that the foregoing bill of exceptions correctly and fully states the proceedings and all thereof, and contains and fully and accurately sets forth all of the testimony and evidence advanced upon said trial and contains all of the instructions of the court to the jury, and truly states all of the rulings of the court upon the questions of law presented and the exceptions taken by the defendants appearing therein were duly taken and allowed; that said bill of exceptions was prepared and submitted within the time allowed by the order of this court and the rules thereof, and containing the evidence adduced against the defendants at said trial and all thereof, as aforesaid, is now signed and settled as and for the bill of exceptions in said cause and the same is now hereby ordered to be made a part of the record in said cause.

In Witness Whereof, I have hereunto set my hand and seal of said Court, this 2nd day of July, 1931.

CHARLES C. CAVANAH,
Judge.

Due service of the aforegoing Bill of Exceptions is hereby admitted and accepted this 24th day of June, 1931.

CHAS. D. ERSKINE,
Assistant U. S. Attorney.

Filed July 6th, 1931.
G. H. MARSH, Clerk.

AND AFTERWARDS, to-wit: on the 6th day of ———— there was duly filed in said Court, an ORDER WAIVING PRINTING OF EXHIBITS, in words and figures, as follows, to-wit:

ORDER WAIVING PRINTING OF EXHIBITS

Based upon the Stipulation of the parties hereto,

IT IS HEREBY ORDERED that all of the original exhibits offered and submitted in the above entitled cause, may be omitted from the Bill of Exceptions, and sent to the Clerk of the United States Circuit Court of Appeals, without the necessity of printing the same as a part of the record, the printing of which is hereby waived.

IT IS FURTHER ORDERED that Government Exhibits numbered 1 to 29, inclusive, (being the liquor exhibits) need not be forwarded to the Clerk of the Circuit Court of Appeals, but may be referred to upon the appeal hereof, as though same had been so forwarded.

Dated this 2nd day of July, 1931.

CHARLES C. CAVANAH,
Judge.

Filed July 6th, 1931.
G. H. MARSH, Clerk.

AND AFTERWARDS, to-wit: on the 7th day of July, 1931, there was duly filed in said Court, a PRAECIPE, in words and figures, as follows, to-wit:

PRAECIPE

To the Clerk of the above entitled Court:

You will please include in the record of the above entitled cause, to be docketed in the Circuit Court of Appeals upon appeal of the defendants herein, and cause to be printed, as the record in said court of appeals, the following:

1. Indictment.
2. Arraignment and plea of Rudolph Bouthellier and Frank Bouthellier.
3. Arraignment and plea of Joseph Brown.
4. Record of trial.
5. Verdict.
6. Judgment and sentence.
7. Petition for allowance of appeal.
8. Assignment of Errors.
9. Order allowing appeal.
10. Undertaking on appeal for Joseph Brown.
11. Undertaking on appeal for Rudolph Bouthellier.
12. Undertaking on appeal for Frank Bouthellier.
13. Citation of Appeal.
14. Order waiving printing of exhibits.
15. Bill of Exceptions.
16. Stipulation waiving formal parts.
17. Clerk's certificate.

BARNETT H. GOLDSTEIN,
Attorney for Appellants.

Due service of the above is hereby accepted this 7th day of July, 1931.

GEORGE NEUNER,
United States Attorney.
By CHAS. W. ERSKINE,
Assistant U. S. Attorney.

Filed July 7, 1931.
G. H. MARSH, Clerk.

AND AFTERWARDS to-wit: on the 7th day of July, 1931, there was duly filed in said Court, a stipulation, in words and figures, as follows, to-wit:

STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the printed transcript of record in the above entitled cause, may have omitted therefrom, all titles, verifications, dates of filing, acceptances of service, verifications to and justification of undertakings on appeal, and all formal parts of and to said record, save and except that relating to the indictment and citation on appeal.

BARNETT H. GOLDSTEIN,
Attorney for Appellants.
GEORGE NEUNER,
United States Attorney.
By CHAS. W. ERSKINE,
Assistant U. S. Attorney.

Dated July 7, 1931.
Filed July 7, 1931.
G. H. MARSH, Clerk.

CERTIFICATE OF CLERK

I, Geo. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered .. to .... inclusive, constitute the transcript of record upon the appeal from this court in the case of JOSEPH BROWN, RUDOLPH BOUTHELLIER AND FRANK BOUTHELLIER, Appellants, vs. UNITED STATES OF AMERICA, Appellee; that the said transcript has been prepared by me in accordance with the praecipe for transcript and stipulation of the parties hereto, and said transcript is a full, true and complete transcript of record and proceedings had in said Court in said cause in accordance with said praecipe and stipulation, as the same appear of record and on file at my office and in my custody.

I further certify that the fee for certifying to the within transcript, to-wit: the sum of $..... has been paid by the said appellants.

GEO. H. MARSH,
Clerk of the District Court of the United States for the District of Oregon.